TITLE 41—PUBLIC CONTRACTS

Chap.		Sec.
1.	General Provisions	1
2.	Termination of War Contracts	101
3.	Procurement of Supplies and Services by Armed Services [Repealed]	151
4.	Procurement Procedures	201
5.	Judicial Review of Administrative Decisions	321
6.	Service Contract Labor Standards	351
7.	Office of Federal Procurement Policy	401

CHAPTER 1—GENERAL PROVISIONS

Sec.
1 to 4a. Repealed.
5. Advertisements for proposals for purchases and contracts for supplies or services for Government departments; application to Government sales and contracts to sell and to Government corporations.
5a. Definitions.
6. Repealed.
6a. Advertisements for proposals for purchases and contracts for supplies or services for Government departments; limited to particular agencies under specified circumstances.
6a-1. Architect of the Capitol, exception from advertisement requirements.
6b. Miscellaneous exceptions from advertisement requirements.
(a) Control of insects, pests, and grass diseases.
(b) Omitted.
(c) Operations on Menominee Indian Reservation.
(d) Sale of Indian produced forest products.
6c to 6jj. Repealed.
6kk. Omitted.
6ll. Repealed.
6mm. Transferred.
7 to 7d. Repealed.
8. Opening bids.
9. Repealed.
10. Omitted.
10a. American materials required for public use.
10b. Contracts for public works; specification for use of American materials; blacklisting contractors violating requirements.
10c. Definition of terms used in sections 10a to 10c.
10d. Clarification of Congressional intent regarding sections 10a and 10b(a).
11. No contracts or purchases unless authorized or under adequate appropriation; report to the Congress.
12. No contract to exceed appropriation.
13. Contracts limited to one year.
13a. Repealed.
14. Restriction on purchases of land.
15. Transfers of contracts; assignments of claims; setoff against assignee.
16. Repealed.
16a to 16d. Omitted.
17 to 19. Repealed.
20. Deposit of contracts.
20a. Exemption from deposit of contracts concerning national-forest lands.
Sec.
20b. Exemption from deposit of leases, contracts, etc., concerning use of lands or waters under jurisdiction of Department of Interior.
21. Rules and regulations as to contract deposits.
22. Interest of Member of Congress.
23. Orders or contracts for material placed with Government-owned establishments deemed obligations.
24. Contracts for transportation of moneys, bullion, coin, and securities.
24a. Omitted.
25 to 27. Repealed.
28 to 34. Omitted.
35. Contracts for materials, etc., exceeding $10,000; representations and stipulations.
36. Liability for contract breach; cancellation; completion by Government agency; employee's wages.
37. Distribution of list of persons breaching contract; future contracts prohibited.
38. Administration of Walsh-Healey provisions; officers and employees; appointment; investigations; rules and regulations.
39. Hearings on Walsh-Healey provisions by Secretary of Labor; witness fees; failure to obey order; punishment.
40. Exceptions from Walsh-Healey provisions; modification of contracts; variations; overtime; suspension of representations and stipulations.
41. "Person" defined in Walsh-Healey provisions.
42. Effect of sections 35 to 45 on other laws.
43. Sections 35 to 45 not applicable to certain contracts.
43a. Administrative procedure provisions.
(a) Applicability.
(b) Wage determination; administrative review.
(c) Judicial review.
44. Separability of Walsh-Healey provisions.
45. Effective date of Walsh-Healey provisions; exception as to representations with respect to minimum wages.
46. Committee for Purchase from the Blind and Other Severely Handicapped.
(a) Establishment.
(b) Vacancy.
(c) Chairman.
(d) Terms.
(e) Pay and travel expenses.
(f) Staff.
(g) Obtaining official data.
(h) Administrative support services.
(i) Annual report.
47. Duties and powers of the Committee.
(a) Procurement list: publication in Federal Register; additions and removals.
(b) Fair market price; price revisions.
(c) Central nonprofit agency; designation.
(d) Rules and regulations; blind made products, priority.
(e) Problems and production methods; study and evaluation.
48. Procurement requirements for the Government; nonapplication to prison made products.

Sec.
48a. Audit.
48b. Definitions.
48c. Authorization of appropriations.
49. Defense employment; honorable discharge from land and naval forces as equivalent to birth certificate.
50. "Defense contractor" defined.
51. Fees or kick-backs by subcontractors on negotiated contracts; recovery by United States; conclusive presumptions; withholding of payments.
52. Definitions.
53. Power of General Accounting Office as to fees and kick-backs.
54. Penalties as to fees and kick-backs.

EXECUTIVE ORDER NO. 10925

Ex. Ord. No. 10925, Mar. 6, 1961, 26 F.R. 1977 which related to nondiscrimination provisions in Government contracts, was revoked by section 403 of Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY

Abolition of Committee on Equal Employment Opportunity, see Ex. Ord. No. 11246, § 403(a), Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

CROSS REFERENCES

"Defense contractor" defined, see section 50 of this title.

Honorable discharge from land and naval forces as substitute for birth certificate required for defense employment, see section 49 of this title.

Renegotiation Act, see section 1191 of Title 50, Appendix, War and National Defense.

Renegotiation Act of 1948, see section 1193 of Title 50, Appendix.

Renegotiation Act of 1951, see section 1211 et seq. of Title 50, Appendix.

War and Defense Contract Acts, see section 1152 et seq. of Title 50, Appendix.

§§ 1 to 4a. Repealed. Oct. 21, 1941, ch. 452, 55 Stat. 743

Section 1, R.S. § 512; act Feb. 4, 1929, ch. 146, §§ 1, 3, 45 Stat. 1147, establish a return office for filing returns of contracts made by the Secretaries of War, Navy and Interior and appointed a clerk for this office.

Section 2, R.S. § 513, required the clerk to file all returns.

Section 3, R.S. § 514, required the clerk to keep an index book.

Section 4, R.S. § 515, required the clerk to provide certified copies of any returns for an established fee.

Section 4a, act Feb. 4, 1929, ch. 146, §§ 1, 3, 45 Stat. 1147, transferred returns office to the General Accounting Office and imposed duties relating thereto upon the Comptroller General.

§ 5. Advertisements for proposals for purchases and contracts for supplies or services for Government departments; application to Government sales and contracts to sell and to Government corporations

Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed $10,000, (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 1638 of Appendix to title 50, (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed $500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising.

In the case of wholly owned Government corporations, this section shall apply to their administrative transactions only.

(R.S. § 3709; Aug. 2, 1946, ch. 744, § 9(a), (c), 60 Stat. 809; June 30, 1949, ch. 288, title VI, § 602(f), formerly title V, § 502(e), 63 Stat. 400, renumbered Sept. 5, 1950, ch. 849, §§ 6(a), (b), 8(c), 64 Stat. 583, and amended Aug. 28, 1958, Pub. L. 85-800, § 7, 72 Stat. 967; July 25, 1974, Pub. L. 93-356, § 1, 88 Stat. 390.)

REFERENCES IN TEXT

Section 1638 of Appendix to title 50, referred to in text, was repealed by act June 30, 1949, ch. 288, title VI, § 602(a)(1), 63 Stat. 399, eff. July 1, 1949, renumbered by act Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583. See now section 471 et seq. of Title 40, Public Buildings, Property, and Works.

CODIFICATION

R.S. § 3709 is from act Mar. 2, 1861, ch. 84, § 10, 12 Stat. 220.

Section is also set out in the District of Columbia Code, § 1-808.

AMENDMENTS

1974—Pub. L. 93-356 substituted "$10,000" for "$2,500".

1958—Pub. L. 85-800 substituted "$2,500" for "$500" in first sentence.

1949—Act June 30, 1949, raised the limitation from $100 to $500.

1946—Act Aug. 2, 1946, among other changes, inserted clauses (1), (3), and (4), and made section applicable to sales and contracts of sale by the government, except in certain cases.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

EXEMPTION OF FUNCTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

NATIONAL DEFENSE CONTRACTS

Negotiation of contracts for naval vessels, aircraft, and equipment, without advertisement or competitive bidding during temporary emergency, see section 1152 et seq. of Title 50, Appendix, War and National Defense.

SECTION INAPPLICABLE TO ARMED SERVICES AND NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Section inapplicable to procurement of supplies or services by Armed Services and National Aeronautics and Space Administration, see section 2314 of Title 10, Armed Forces.

Repeal of Exemptions

Section 9(b) of act Aug. 2, 1946, provided: "Exemptions from section 3709, Revised Statutes [this section], in other law in amounts of $100 or less are hereby repealed."

Cross References

Air pollution control grants-in-aid and contracts, see section 1857d of Title 42, The Public Health and Welfare.

Architect of Capitol, purchasing supplies and procuring services not in excess of $1,000, see section 6a–1 of this title.

Armed services, procurement of supplies and services, see sections 2301 et seq. and 2381 et seq. of Title 10, Armed Forces.

Conservation, National Park Service—

Hiring of work animals and equipment not required to comply with this section in certain cases, see section 17i of Title 16, Conservation.

Materials and equipment for control, suppression, and eradication of forest insects and tree diseases, exception of, see section 594–5 of Title 16.

Seeding and tree planting within national forests, open purchases without advertisement, see section 504 of Title 16.

Services and accommodations for public in national parks and national monuments, see section 17b of Title 16.

Contracts for transportation of moneys, bullion, coin, etc., see section 24 of this title.

Control of coal-mine fires, employment of equipment by Secretary of Interior without regard to this section, see section 556 of Title 30, Mineral Lands and Mining.

Definition of terms employed in this section, see section 5a of this title.

District of Columbia, advancements for public works and equipment excepted, see section 1563 of Title 42, The Public Health and Welfare.

Farm Credit Administration, maintenance and disposal of properties by, see section 1141b of Title 12, Banks and Banking.

Farm Housing, service and supply contracts not exceeding $300 unaffected by provisions of this section, see section 1480 of Title 42, The Public Health and Welfare.

Federal Deposit Insurance Corporation, Comptroller General authorized for purposes of audit thereof to employ by contract professional services of firms and organizations of certified public accountants without regard to this section, see section 1827 of Title 12, Banks and Banking.

Federal Power Commission—

Bonneville power project, purchase of supplies and services without advertisement, see section 832g of Title 16, Conservation.

Contracts for engraving, lithographing, and photolithographing, without advertisement for proposals, see section 825k of Title 16.

Fort Peck power project, purchase of supplies and services without advertisement, see section 833f of Title 16.

Fishery resources, authority of Secretary of Interior to contract to utilize state facilities and services without regard to this section, see section 757 of Title 16.

General Services Administration, procurement of supplies or services, see section 260 of this title.

Highway research program, inapplicability of this section to contracts, see section 307 of Title 23, Highways.

House of Representatives, procurement of packing boxes, see section 100 of Title 2, The Congress.

Housing—

Contracts for hazard insurance and purchases by Federal Housing Commissioner, excepted, see sections 1703, 1710, and 1713 of Title 12, Banks and Banking.

Purchases and contracts by Housing and Home Finance Administrator, Federal Home Loan Bank Board, Federal Housing Commissioner, and Public Housing Commissioner excepted from this section, see section 1701c of Title 12.

Purchases and contracts for services or supplies under $1,000 for national defense housing excepted from this section, see section 1750c of Title 12.

International health research, authority of President to contract with public and nonprofit private institutions and agencies and individuals in participating foreign countries without regard to provisions of this section, see section 2103 of Title 22, Foreign Relations and Intercourse.

Menominee Indian Reservation, supplies for operations on reservation, and sale of Indian-produced forest products, see section 6b of this title.

National defense education program, Commissioner's power to utilize services and facilities of public or nonprofit agencies without regard to this section, see section 581 of Title 20, Education.

National Fisheries Center and Aquarium, authority of Secretary of Interior to provide for vessels for specimen collecting purposes without regard to this section, see section 1052 of Title 16, Conservation.

National Science Foundation, contracts and other arrangements, see section 1870 of Title 42, The Public Health and Welfare.

Procurement of transportation services from common carrier, exception of, see section 65 of Title 49, Transportation.

Public Printing—

Authority required to authorize publication of advertisements, notices, or proposals for any Executive Department, see section 3702 of Title 44, Public Printing and Documents.

Purchase of paper and materials for the Government Printing Office, see section 501 et seq. of Title 44.

Radium, purchase without regard to this section, see section 283 of Title 42, The Public Health and Welfare.

Railroad Retirement Board, services and supplies for, see section 361 of Title 45, Railroads.

Reconditioning of foreign merchant vessels acquired under emergency authority, see section 198 of Title 50, War and National Defense.

References to this section deemed references to section 252 of this title, see section 260 of this title.

Small Business Administrator, power to pursue assigned claims to final collection in connection with loans, see section 634 of Title 15, Commerce and Trade.

State Department—

Foreign service buildings, furnishings for without regard to this section, see section 295b of Title 22, Foreign Relations and Intercourse.

Foreign Service Institute, acquisition of realty and other property and equipment for without regard to this section, see section 1047 of Title 22.

International Labour Conference, printing and binding for without regard to this section, see section 272a of Title 22.

International Refugee Organization, funds available for expenditure without regard to this section, see section 289c of Title 22.

South Pacific Commission, printing and binding for without regard to this section, see section 280b of Title 22.

United Nations, printing and binding for without regard to this section, see section 287c of Title 22.

Stationery for United States Senate and House of Representatives, advertisement for sealed proposals, see section 106 of Title 2, The Congress.

Virgin Islands, internal development, acquisition of land, and use of funds, etc., without regard to this section, and inapplicability of this section to certain purchases and services, see sections 1409b, 1409f and 1409j of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5a, 6a, 6a–1, 6b, 252, 260 of this title; title 2 sections 72a, 135a, 475, 604; title 5 sections 3109, 4105, 8709, 8714a, 8902; title 7 sections 87e–1, 427i, 1624; title 8 sections 1252, 1355; title 10 section 2314; title 12 sections 1141b, 1701z–2, 1703, 1710, 1713, 1739, 1747g, 1747k, 1749a, 1750c, 1788, 1827; title 15 sections 634, 2218, 2507, 2609, 2626; title 16 sections 17b, 17l, 343b, 450jj–1, 504, 580c, 590z–3, 594–5, 757, 916*l*, 961, 1052; title 20 sections 1034, 1070d–1, 2012, 2106; title 21 section 872; title 22 sections 272a, 280b, 280i, 280k, 287e, 287r, 289c, 290b, 295b, 1047, 2103, 2179, 2509; title 23 section 140; title 24 sections 322, 324; title 28 sections 624, 753; title 29 section 671; title 30 section 556; title 31 section 866; title 33 sections 1123, 1254; title 38 sections 766, 806, 1820, 4101, 4202, 5012, 5070; title 40 sections 71a, 276a–7, 484, 609, 758; title 42 sections 242k, 242m, 247d, 263d, 283, 285, 286d, 287b, 292f, 295f–4, 295g–9, 295g–10, 296k, 300c–11, 300c–21, 300c–22, 300d–5, 300e–2, 300e–3, 300u, 1395u, 1532, 1543, 1563, 1592d, 1592h, 1857b, 1857b–1, 1870, 2051, 2061, 2063, 2075, 2096, 2210, 2293, 2295, 2310, 2349, 2362, 3211, 3535, 4081, 4082, 4101, 4372, 4585, 6009, 6616; title 45 sections 361, 712, 715; title 46 section 1126; title 48 sections 1409b, 1409f, 1409j; title 49 sections 20, 20b, 65, 1159, 1638, 1643, 1903; title 50 sections 98b, 198; title 50 App. section 1918.

§ 5a. Definitions

The word "department" as used in this Act shall be construed to include independent establishments, other agencies, wholly owned Government corporations (the transactions of which corporations shall be subject to the authorizations and limitations of this Act, except that section 5 of this title shall apply to their administrative transactions only), and the government of the District of Columbia, but shall not include the Senate, House of Representatives, or office of the Architect of the Capitol, or the officers or employees thereof. The words "continental United States" as used herein shall be construed to mean the forty-eight States and the District of Columbia. The word "Government" shall be construed to include the government of the District of Columbia. The word "appropriation" shall be construed as including funds made available by legislation under section 849 of title 31.

(Aug. 2, 1946, ch. 744, § 18, 60 Stat. 811.)

REFERENCES IN TEXT

This Act, referred to in text, means act Aug. 2, 1946, ch. 744, 60 Stat. 806. For complete classification of this Act to the Code see Tables volume.

CODIFICATION

Section was formerly classified to section 73b–4 of title 5 prior to the general revision and reenactment of Title 5, Government Organization and Employees by Pub. L. 89–554, Sept. 6, 1966 80 Stat. 378.

§ 6. Repealed. Oct. 31, 1951, ch. 654, § 1(98) to (105), 65 Stat. 705

Section, acts Oct. 10, 1940, ch. 851, § 1, 54 Stat. 1109; June 28, 1941, ch. 258, titles II, III, IV, 55 Stat. 281, 289, 292, 302; June 8, 1942, ch. 396, § 1, 56 Stat. 347; July 2, 1942, ch. 472, titles II, III, IV, 56 Stat. 483, 500, 505; June 28, 1943, ch. 173, titles I, II, 57 Stat. 236, 243; June 26, 1944, ch. 277, title I, § 101, title II, § 201, 58 Stat. 351, 358; June 13, 1945, ch. 189, § 1, 59 Stat. 256; July 1, 1946, ch. 530, § 101, 60 Stat. 405; June 30, 1947, ch. 166, title II, § 204, 61 Stat. 208; June 30, 1949, ch. 288, title I, §§ 103, 104(a), 63 Stat. 380, which excepted from the provisions of section 5 of this title a number of specified government departments and agencies, when purchases or services were not in excess of certain specified amounts up to $500, was superseded and rendered unnecessary by section 5, as amended.

Another provision of title III of act July 2, 1942, ch. 472, on page 493 of 56 Statutes at Large, which also had been shown as one of the sources of this former section, made an exception with respect to purchases or services rendered for the Office of the Administrator of Civil Aeronautics, when the aggregate amount involved did not exceed $100. That provision was not repealed, but, if it did not expire with that act, which was an appropriation act, it, too, was superseded and rendered unnecessary by section 5 of this title.

A prior section 6, acts Feb. 27, 1893, ch. 168, 27 Stat. 485; Mar. 1, 1899, ch. 325, 30 Stat. 957; Mar. 2, 1911, ch. 192, 36 Stat. 975; May 18, 1916, ch. 125, § 1, 39 Stat. 126; Mar. 1, 1919, ch. 86, § 1, 40 Stat. 1262; May 29, 1920, ch. 214, § 1, 41 Stat. 677; June 12, 1922, ch. 218, 42 Stat. 638; Feb. 13, 1923, ch. 72, 42 Stat. 1244; Feb. 15, 1934, ch. 13, § 1, 48 Stat. 351, which related to exceptions to the requirements of section 5 of this title, was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111, and is now covered by sections 5, 6a, and 6b of this title.

§ 6a. Advertisements for proposals for purchases and contracts for supplies or services for Government departments; limited to particular agencies under specified circumstances

Section 5 of this title shall not be construed to apply under any appropriation Act to the following departments and independent offices under the circumstances specified herein:

(a) American Battle Monuments Commission—to any leases in foreign countries for office or garage space.

(b) to (e) Repealed. Oct. 31, 1951, ch. 654, § 1(107), 65 Stat. 705.

(f) The Bureau of Interparliamentary Union for Promotion of International Arbitration—to stenographic reporting services by contract if deemed necessary.

(g) Repealed. Oct. 31, 1951, ch. 654, § 1(107), 65 Stat. 705.

(h) Department of State—when the purchase or service relates to the packing of personal and household effects of Diplomatic, Consular, and Foreign Service officers and clerks for foreign shipment.

(i) Repealed. Oct. 31, 1951, ch. 654, § 1(107), 65 Stat. 705.

(j) The International Committee of Aerial Legal Experts—to stenographic and other service by contract as deemed necessary.

(June 12, 1917, ch. 27, § 1, 40 Stat. 144; May 13, 1926, ch. 294, § 1, 44 Stat. 547; Oct. 10, 1940, ch. 851, § 2, 54 Stat. 1110; June 28, 1941, ch. 259, § 1, 55 Stat. 344; Oct. 31, 1951, ch. 654, §§ 1(106)–(108), 3(8), (9), 4(9), 65 Stat. 705, 708, 709; July 1, 1957, Pub. L. 85–75, § 101, 71 Stat. 251.)

CODIFICATION

Opening par., and subsecs. (a), (f), (h), and (j) are from act Oct. 10, 1940, § 2, opening par., and pars. (a), (f), and (j). Remainder of paragraphs of section 2 were repealed. See 1951 amendment note under this section.

Subsec. (o), which was from Act May 13, 1926, ch. 294, § 1, 44 Stat. 547, made section 5 inapplicable to the Architect of the Capitol in the purchase of supplies and equipment and procurement of services when the aggregate amount thereof did not exceed $1,000 in any instance and was omitted from the Code as superseded by section 6a–1 of this title.

Subsec. (p), which was from act June 12, 1917, ch. 27, § 1, 40 Stat. 144, made section 5 of this title inapplicable to expenditures not exceeding $50 by the United

States Geological Survey and was repealed by act Oct. 31, 1951, ch. 654, § 1(106), 66 Stat. 705.

PRIOR PROVISIONS

A prior section 6a, acts Jan. 25, 1929, ch. 102, title IV, 45 Stat. 1136; Apr. 18, 1930, ch. 184, title IV, 46 Stat. 215; Feb. 23, 1931, ch. 280, title IV, 46 Stat. 1352; July 1, 1932, ch. 361, title IV, 47 Stat. 520; Mar. 1, 1933, ch. 144, title IV, 47 Stat. 1409; Apr. 7, 1934, ch. 104, title IV, 48 Stat. 568; Mar. 22, 1935, ch. 39, § 1, 49 Stat. 102; May 15, 1936, ch. 405, § 1, 49 Stat. 1347; June 16, 1937, ch. 359, § 1, title IV, 50 Stat. 298; Apr. 27, 1938, ch. 180, title IV, § 1, 52 Stat. 285; June 29, 1939, ch. 249, § 1, 53 Stat. 921; June 26, 1940, ch. 428, title I, 54 Stat. 575, which excepted the Department of Labor from the provisions of section 5 of this title, was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111.

AMENDMENTS

1957—Subsec. (o). Pub. L. 85-75 substituted "$1,000" for "$500".

1951—Subsec. (a). Act Oct. 31, 1951, § 3(8), struck out "to any purchases when the aggregate amount involved does not exceed $500, nor" preceding "to any leases".

Subsec. (b). Act Oct. 31, 1951, § 1(107), repealed subsec. (b) which related to the Botanic Garden.

Subsec. (c). Act Oct. 31, 1951, § 1(107), repealed subsec. (c) which also related to the Botanic Garden.

Subsec. (d). Act Oct. 31, 1951, § 1(107), repealed subsec. (d) which related to the Bureau of the Budget.

Subsec. (e). Act Oct. 31, 1951, § 1(107), repealed subsec. (e) which related to the Bureau of Foreign and Domestic Commerce.

Subsec. (g). Act Oct. 31, 1951, § 1(107), repealed subsec. (g) which related to the Department of the Interior.

Subsec. (h). Act Oct. 31, 1951, § 3(9), struck out "to any purchase or service when the aggregate amount does not exceed $100, or with respect to articles, materials, or supplies for use outside the United States when the aggregate amount involved does not exceed $300; or" preceding "when the purchase".

Subsec. (i). Act Oct. 31, 1951, § 1(107), repealed subsec. (i) which related to the Federal Communications Commission.

Subsec. (k). Act Oct. 31, 1951, § 1(107), repealed subsec. (k) which related to the Medical Department of the Army.

Subsec. (l). Act Oct. 31, 1951, § 1(107), repealed subsec. (l) which related to the Social Security Board.

Subsec. (m). Act Oct. 31, 1951, § 1(107), repealed subsec. (m) which related to the Bureau of Mines.

Subsec. (n). Act Oct. 31, 1951, § 1(107), repealed subsec. (n) which related to the Bureau of Reclamation.

Subsec. (o). Act Oct. 31, 1951, § 4(9), increased the maximum from $200 to $500.

1941—Subsec. (m). Act June 28, 1941, reaffirmed the provision respecting the Bureau of Mines.

REPEALS

Section 1(108) of act Oct. 31, 1951, repealed the proviso in section 1 of act June 28, 1941, ch. 259, 55 Stat. 344, which excepted expenditures not exceeding $500 by the Bureau of Mines from section 5 of this title.

Section 1(106) of act Oct. 31, 1951, repealed the proviso in section 1 of act June 12, 1917, ch. 27, 40 Stat. 144, which excepted expenditures not exceeding $50 by the United States Geological Survey from section 5 of this title.

Section 4(a) of act Oct. 10, 1940, provided for repeal of all prior laws, which are now covered by that act and that any rights or liabilities existing under those repealed sections or parts of sections shall not be affected by their repeal.

LEASES FOR FOREIGN SERVICE OFFICES

Provisions contained in annual appropriation acts for the Department of State authorizing the Secretary of State to enter into leases for Foreign Service offices and grounds for periods not exceeding ten years without regard to section 5 of this title were made permanent, and are now covered by section 2670 of Title 22, Foreign Relations and Intercourse.

BUREAU OF EMPLOYEES' COMPENSATION

Section 5 of this title shall not apply to any purchase or service of the Bureau of Employees' Compensation outside continental United States when the aggregate amount involved does not exceed $500 under acts July 8, 1947, ch. 210, title II, § 201, 61 Stat. 264; June 14, 1948, ch. 465, title II, § 201, 62 Stat. 396; June 29, 1949, ch. 275, title II, § 201, 63 Stat. 284. This Bureau, with its functions, was transferred from the Federal Security Agency to the Department of Labor by Reorg. Plan No. 19, of 1950, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271, set out in the Appendix to Title 5, Government Organization and Employees.

GOVERNMENT-OWNED FURNITURE REMOVED TO WASHINGTON, D.C.

Act July 30, 1947, ch. 359, title I, § 101, 61 Stat. 594, provided in part: "That removal to the seat of government of Government-owned or leased furniture, equipment, supplies, and other property and household goods and personal effects of employees, and costs of restoration of leased office space when required, may be accomplished without regard to section 3709 of the Revised Statutes [section 5 of this title]".

SECTION INAPPLICABLE TO ARMED SERVICES AND NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Section inapplicable to procurement of supplies or services by Armed Services and National Aeronautics and Space Administration, see section 2314 of Title 10, Armed Forces.

CROSS REFERENCES

Exemption of all purchases and contracts when the amount involved does not exceed $500, see section 5 of this title.

General Services Administration, section inapplicable to procurement of property or services by, see section 260 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2314.

§ 6a-1. Architect of the Capitol, exception from advertisement requirements

On and after July 27, 1965, the purchase of supplies and equipment and the procurement of services for all branches under the Architect of the Capitol may be made in the open market without compliance with section 5 of this title in the manner common among businessmen, when the aggregate amount of the purchase or the service does not exceed $10,000 in any instance.

(Pub. L. 89-90, § 101, July 27, 1965, 79 Stat. 276; Pub. L. 93-356, § 2, July 25, 1974, 88 Stat. 390.)

PRIOR PROVISIONS

A prior section 6a-1, acts June 25, 1910, ch. 431, § 23, 36 Stat. 861; May 18, 1916, ch. 125, § 1, 39 Stat. 126; Jan. 12, 1927, ch. 27, 44 Stat. 936, which related to the purchase of Indian supplies, was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111.

AMENDMENTS

1974—Pub. L. 93-356 substituted "$10,000" for "$2,500".

§ 6b. Miscellaneous exceptions from advertisement requirements

(a) Control of insects, pests, and grass diseases

Materials and equipment for the control of incipient or emergency outbreaks of insects, pests, or grass diseases, including grasshoppers, Mormon crickets, and chinch bugs, may be procured with any sums appropriated to carry out the provisions of sections 148 to 148e of title 7 without regard to the provisions of section 5 of this title, and the transportation thereof may be under such conditions and means as shall be determined by the Secretary of Agriculture to be most advantageous.

(b) Omitted

(c) Operations on Menominee Indian Reservation

All contracts for labor or supplies necessary for the carrying on of operations on the Menominee Indian Reservation pursuant to the Act of March 28, 1908 (35 Stat. 51), as amended, shall be exempt from the requirements of section 5 of this title.

(d) Sale of Indian produced forest products

The lumber and other forest products produced by Indian enterprises from the forests on Indian reservations may be sold under such regulations as the Secretary of the Interior may prescribe, without compliance with section 5 of this title.

(June 24, 1940, ch. 412, 54 Stat. 504; Oct. 10, 1940, ch. 851, § 3(a), (c), 54 Stat. 1111.)

REFERENCES IN TEXT

Section 148b of title 7, included within the reference to sections 148 to 148e of title 7 in subsec. (a), was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111, and is now covered by this section.

Act of March 28, 1908 (35 Stat. 51), referred to in subsec. (c), probably means act Mar. 28, 1908, ch. 111, 35 Stat. 51, which was not classified to the Code.

CODIFICATION

Subsec. (a) is from act Oct. 10, 1940.

Subsec. (b), act Oct. 10, 1940, relating to the obligations of the Civilian Conservation Corps, is omitted as obsolete, since the Corps was liquidated June 30, 1944.

Subsec. (c) is from act Oct. 10, 1940.

Subsec. (d) is from act June 24, 1940.

Subsec. (e), which related to the employment of experts or consultants in the Canal Zone, was from the General Government Matters Appropriation Act, 1962, Pub. L. 87-125, title III, § 301, Aug. 3, 1961, 75 Stat. 279, and was omitted from the Code as not repeated in subsequent appropriation acts.

PRIOR PROVISIONS

A prior section 6b, acts Feb. 23, 1931, ch. 281, § 1, 46 Stat. 1363; June 30, 1932, ch. 330, § 1, 47 Stat. 460; June 16, 1933, ch. 101, § 1, 48 Stat. 292; Mar. 28, 1934, ch. 102, title I, § 1, 48 Stat. 514; Feb. 2, 1935, ch. 3, § 1, 49 Stat. 11; Mar. 19, 1936, ch. 156, § 1, 49 Stat. 1173; June 28, 1937, ch. 396, 50 Stat. 336; May 23, 1938, ch. 259, § 1, 52 Stat. 418; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 532; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 131,—which excepted the General Accounting Office from the provisions of section 5 of this title, was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111.

TRANSFER OF FUNCTIONS

All functions of all officers, agencies and employees of the Department of Agriculture were transferred, with certain exceptions, to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

SIMILAR PROVISIONS

Provisions similar to former subsec. (e) were contained in the following prior appropriation acts:

May 13, 1960, Pub. L. 86-451, title II, § 201, 74 Stat. 101.

July 13, 1959 Pub. L. 86-88, title II, § 201, 73 Stat. 208.

June 25, 1958, Pub. L. 85-469, title II, § 203, 72 Stat. 236.

June 13, 1957, Pub. L. 85-52, title II, § 203, 71 Stat. 79, as amended by Mar. 28, 1958, Pub. L. 85-352, ch. II, § 201, 72 Stat. 52.

June 20, 1956, ch. 415, title II, § 203, 70 Stat. 324.

June 30, 1955, ch. 253, title II, § 203, 69 Stat. 236.

June 30, 1954, ch. 425, § 104, 68 Stat. 335.

July 27, 1953, ch. 245, § 104, 67 Stat. 202.

July 11, 1952, ch. 669, § 104, 66 Stat. 584.

Oct. 24, 1951, ch. 556, § 104, 65 Stat. 622.

Sept. 6, 1950, ch. 896, ch. IX, § 103, 64 Stat. 730.

Oct. 13, 1949, ch. 688, § 4, 63 Stat. 852.

June 25, 1948, ch. 655, § 4, 62 Stat. 1026.

July 31, 1947, ch. 411, § 4, 61 Stat. 694.

May 2, 1946, ch. 247, § 4, 60 Stat. 167.

Mar. 31, 1945, ch. 45, § 4, 59 Stat. 45.

June 26, 1944, ch. 275, § 4, 58 Stat. 333.

June 2, 1943, ch. 115, § 4, 57 Stat. 99.

Apr. 28, 1942, ch. 246, § 5, 56 Stat. 225.

June 24, 1940, ch. 412, 54 Stat. 504.

§§ 6c to 6jj. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111

Section 6c acts June 22, 1936, ch. 689, § 1, 49 Stat. 1604; June 28, 1937, ch. 396, § 1, 50 Stat. 341; May 23, 1938, ch. 259, § 1, 52 Stat. 424; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 539; June 25, 1940, ch. 421, § 1, 54 Stat. 566, excepted the Rural Electrification Administration from the provisions of section 5 of this title when the aggregate amount involved did not exceed $100.

Section 6d, acts June 22, 1936, ch. 689, § 1, 49 Stat. 1605; June 28, 1937, ch. 396, § 1, 50 Stat. 344; May 23, 1938, ch. 259, § 1, 52 Stat. 426; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 540, excepted the Social Security Board from the provisions of section 5 of this title when the aggregate amount involved did not exceed $100.

Section 6e, acts May 14, 1937, ch. 180, title I, § 1, 50 Stat. 139; Mar. 28, 1938, ch. 55, § 1, 52 Stat. 123; May 6, 1939, ch. 115, § 1, title I, 53 Stat. 656; Mar. 25, 1940, ch. 71, title I, 54 Stat. 56, excepted the Treasury Department from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6f acts June 16, 1937, ch. 359, title I, 50 Stat. 273; Apr. 27, 1938, ch. 180, title I, § 1, 52 Stat. 258; June 29, 1939, ch. 248, title I, 53 Stat. 896; May 14, 1940, ch. 189, title I, 54 Stat. 192, excepted the Department of State from the provisions of section 5 of this title when the aggregate amount involved did not exceed certain specified amounts.

Section 6g, acts June 16, 1937, ch. 359, title II, 50 Stat. 275; Apr. 27, 1938, ch. 180, title II, § 1, 52 Stat. 260; June 29, 1939, ch. 248, title II, 53 Stat. 898; May 14, 1940, ch. 189, title III, 54 Stat. 201, 202, excepted the Federal Bureau of Investigation from the provisions of section 5 of this title when the aggregate amount did not exceed $50.

Section 6h, acts June 16, 1937, ch. 359, title III, 50 Stat. 285; Apr. 27, 1938, ch. 180, title III, § 1, 52 Stat. 272, excepted the Bureau of Air Commerce from the provisions of section 5 of this title when the aggregate amount involved did not exceed $100.

Section 6i, acts June 28, 1937, ch. 396, § 1, 50 Stat. 335; May 23, 1938, ch. 259, § 1, 52 Stat. 417; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 532; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 124, excepted the Federal Trade Commission from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6j, acts June 28, 1937, ch. 396, § 1, 50 Stat. 338; May 23, 1938, ch. 259, § 1, 52 Stat. 420; Mar. 16,

1939, ch. 11, § 1, 53 Stat. 534; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 133, excepted the Interstate Commerce Commission from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6k, acts June 28, 1937, ch. 396, § 1, 50 Stat. 339; May 23, 1938, ch. 259, § 1, 52 Stat. 421; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 536; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 135, excepted the National Archives from the provisions of section 5 of this title when the aggregate amount did not exceed $50.

Section 6l, acts June 28, 1937, ch. 396, § 1, 50 Stat. 339; May 23, 1938, ch. 259, § 1, 52 Stat. 422; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 537; June 26, 1940, ch. 428, title IV, 54 Stat. 595, excepted the National Labor Relations Board from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6m, acts June 28, 1937, ch. 396, § 1, 50 Stat. 341; May 23, 1938, ch. 259, § 1, 52 Stat. 423; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 538; June 26, 1940, ch. 428, title VI, 54 Stat. 596, excepted the Railroad Retirement Board from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6n, acts June 28, 1937, ch. 396, § 1, 50 Stat. 342; May 23, 1938, ch. 259, § 1, 52 Stat. 425; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 539; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 136, excepted the Securities and Exchange Commission from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6o, act Apr. 6, 1937, ch. 69, § 3, as added May 9, 1938, ch. 192, 52 Stat. 344, excepted control of insects and plant diseases from the provisions of section 5 of this title.

Section 6p, act May 23, 1938, ch. 259, § 1, 52 Stat. 417, Mar. 16, 1939, ch. 11, § 1, 53 Stat. 531; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 124, excepted the Federal Power Commission from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6q, acts June 25, 1938, ch. 681, title I, 52 Stat. 1117; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 535; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 134, excepted the Maritime Labor Board from the provisions of section 5 of this title when the aggregate amount involved did not exceed $100.

Section 6r, acts Mar. 16, 1939, ch. 11, § 1, 53 Stat. 527; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 116, excepted the Civil Aeronautics Authority from the provisions of section 5 of this title when the aggregate amount involved did not exceed $100.

Section 6s, acts Aug. 7, 1935, ch. 455, 49 Stat. 540; Feb. 11, 1936, ch. 49, 49 Stat. 1123; May 15, 1936, ch. 405, 49 Stat. 1316; June 16, 1937, ch. 359, 50 Stat. 267; Apr. 27, 1938, ch. 180, 52 Stat. 254; June 29, 1939, ch. 248, title I, 53 Stat. 892; May 14, 1940, ch. 189, title I, 54 Stat. 188, excepted the International Technical Committee of Aerial Legal Experts from the provisions of section 5 of this title.

Section 6t, acts May 15, 1936, ch. 405, 49 Stat. 1315; June 16, 1937, ch. 359, 50 Stat. 267; Apr. 27, 1938, ch. 180, 52 Stat. 253; June 29, 1939, ch. 248, title I, 53 Stat. 891, excepted the Bureau of Interparliamentary Union for Promotion of International Arbitration from the provisions of section 5 of this title.

Section 6u, acts Feb. 20, 1929, ch. 270, § 1, 45 Stat. 1243; Apr. 19, 1930, ch. 201, § 1, 46 Stat. 243; Feb. 23, 1931, ch. 281, § 1, 46 Stat. 1370; Feb. 2, 1935, ch. 3, § 1, 49 Stat. 16; Mar. 19, 1936, ch. 156, § 1, 49 Stat. 1180; June 28, 1937, ch. 396, § 1, 50 Stat. 345; May 23, 1938, ch. 259, § 1, 52 Stat. 427; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 542; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 137, excepted the Tariff Commission (now the International Trade Commission) from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6v, acts June 28, 1937, ch. 396, § 1, 50 Stat. 331; May 23, 1938, ch. 259, § 1, 52 Stat. 412; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 525; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 113, excepted the American Battle Monuments Commission from the provisions of section 5 of this title when the aggregate amount involved did not exceed $500.

Section 6v-1, act Apr. 18, 1940, ch. 107, § 1, 54 Stat. 113, excepted the American Battle Monuments Commission, when entering into leases in foreign countries, from the provisions of section 5 of this title.

Section 6w, acts June 16, 1938, ch. 464, 52 Stat. 750; June 30, 1939, ch. 253, title II, § 1, 53 Stat. 978; June 25, 1940, ch. 421, § 1, 54 Stat. 568, excepted the Farm Credit Administration from the provisions of section 5 of this title when the aggregate amount did not exceed $50.

Section 6x, act Aug. 25, 1937, ch. 757, title I, 50 Stat. 759, excepted the United States Maritime Commission from the provisions of section 5 of this title when the aggregate amount did not exceed $100.

Section 6y, acts Aug. 9, 1939, ch. 633, title I, § 1, 53 Stat. 1318; June 18, 1940, ch. 395, § 1, 54 Stat. 443, excepted the Bureau of Mines from the provisions of section 5 of this title when the aggregate amount did not exceed $500.

Section 6z, act Apr. 18, 1940, ch. 107, § 1, 54 Stat. 112, excepted the Bureau of the Budget (now the Office of Management and Budget) from the provisions of section 5 of this title when the aggregate amounts involved did not exceed certain specified sums.

Section 6aa, act Apr. 18, 1940, ch. 107, 54 Stat. 118, excepted the Federal Communications Commission from the provisions of section 5 of this title when the aggregate amount did not exceed $50.

Section 6bb, act Apr. 18, 1940, ch. 107, 54 Stat. 119, excepted the Federal Loan Agency from the provisions of section 5 of this title when the aggregate amounts involved did not exceed certain specified sums.

Section 6cc, act Apr. 18, 1940, ch. 107, 54 Stat. 120, excepted the Federal Home Loan Bank from the provisions of section 5 of this title when the aggregate amounts involved did not exceed certain specified sums.

Section 6dd, act Apr. 18, 1940, ch. 107, 54 Stat. 131, excepted the General Accounting Office from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6ee, acts Feb. 11, 1927, ch. 104, § 1, 44 Stat. 1081; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 137, excepted the Tariff Commission (now the International Trade Commission) from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6ff, act May 14, 1940, ch. 189, title I, 54 Stat. 189, excepted the International Boundary Commission, United States and Mexico, from the provisions of section 5 of this title when the aggregate amount involved did not exceed $500.

Section 6gg, act May 14, 1940, ch. 189, title IV, 54 Stat. 211, excepted the Administrative Office of the United States Courts from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6hh, act June 11, 1940, ch. 313, title I, 54 Stat. 290, excepted the Navy Department from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

Section 6ii, acts Jan. 25, 1929, ch. 102, title III, 45 Stat. 1119; Apr. 18, 1930, ch. 184, title III, 46 Stat. 198; Feb. 23, 1931, ch. 280, title III, 46 Stat. 1334; July 1, 1932, ch. 361, title III, 47 Stat. 502; Mar. 1, 1933, ch. 144, title III, 47 Stat. 1393; Apr. 7, 1934, ch. 104, title III, 48 Stat. 551; Mar. 22, 1935, ch. 39, § 1, 49 Stat. 90; May 15, 1936, ch. 405, § 1, 49 Stat. 1336; June 16, 1937, ch. 359, title III, § 1, 50 Stat. 287; Apr. 27, 1938, ch. 180, title III, § 1, 52 Stat. 273; June 29, 1939, ch. 248, title III, 53 Stat. 909, excepted the Bureau of Foreign and Domestic Commerce from the provisions of section 5 of this title when the aggregate amount involved did not exceed $100.

Section 6jj, acts May 13, 1926, ch. 294, § 1, 44 Stat. 548; Feb. 23, 1927, ch. 168, § 1, 44 Stat. 1157; May 14, 1928, ch. 551, § 1, 45 Stat. 528; Feb. 28, 1929, ch. 367,

§ 1, 45 Stat. 1397; June 6, 1930, ch. 407, § 1, 46 Stat. 516; Feb. 20, 1931, ch. 234, § 1, 46 Stat. 1186; June 30, 1932, ch. 314, § 1, 47 Stat. 393; Feb. 28, 1933, ch. 134, § 1, 47 Stat. 1362; May 30, 1934, ch. 372, § 1, 48 Stat. 828; July 8, 1935, ch. 374, § 1, 49 Stat. 471; Apr. 17, 1936, ch. 233, § 1, 49 Stat. 1226; May 18, 1937, ch. 223, 50 Stat. 181; May 17, 1938, ch. 236, § 1, 52 Stat. 392; June 16, 1939, ch. 208, § 1, 53 Stat. 834; June 18, 1940, ch. 396, § 1, 54 Stat. 474, excepted the Botanic Garden, in the purchase of trees and plants, from the provisions of section 5 of this title when the aggregate amount involved did not exceed $300.

§ 6kk. Omitted

Codification

Section, acts Apr. 17, 1936, ch. 233, § 1, 49 Stat. 1226; May 18, 1937, ch. 223, 50 Stat. 181; May 17, 1938, ch. 236, § 1, 52 Stat. 393; June 16, 1939, ch. 208, § 1, 53 Stat. 834; June 18, 1940, ch. 396, § 1, 54 Stat. 474, which excepted the Botanic Garden, in the purchase of supplies and equipment, from the provisions of section 5 of this title when the aggregate amount did not exceed $50, was omitted from the Code as superseded by subsection (b) of section 6a of this title which was itself repealed by act. Oct. 31, 1951, ch. 654, § 1(107), 65 Stat. 705.

§ 6ll. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111

Section, act Apr. 22, 1926, ch. 171, § 1, 44 Stat. 314, excepted the National Advisory Committee for Aeronautics from the provisions of section 5 of this title when the aggregate amount involved did not exceed $50.

§ 6mm. Transferred

Codification

Section, act June 24, 1940, ch. 412, 54 Stat. 504, which excepted forest products by Indian enterprises from the forests on Indian reservations, was transferred to subsec. (d) of section 6b of this title.

§§ 7 to 7d. Repealed. June 30, 1949, ch. 288, title VI, § 602(a)(29) to (31), 63 Stat. 401, renumbered Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583

Section 7, act June 17, 1910, ch. 297, § 4, 36 Stat. 531; Ex. Ord. No. 6166, § 1, eff. June 10, 1933, as amended by Ex. Ord. No. 6623, eff. Mar. 1, 1934, related to advertisements and contracts for miscellaneous supplies for executive departments and other government establishments in Washington; Procurement Division in Department of Treasury; bond of contractor; and purchase or drawing of supplies.

Section 7a, act Feb. 27, 1929, ch. 354, § 1, 45 Stat. 1341; Ex. Ord. No. 6166, § 1, eff. June 10, 1933, as amended by Ex. Ord. No. 6623, eff. Mar. 1, 1934, related to the consolidation and coordination of government purchases.

Section 7b, act Feb. 27, 1929, ch. 354, § 2, 45 Stat. 1342; Ex. Ord. No. 6166, § 1, June 10, 1933, as amended by Ex. Ord. No. 6623, Mar. 1, 1934, provided for requisition of supplies and reimbursement.

Section 7c, act Feb. 27, 1929, ch. 354, § 3, 45 Stat. 1342; Ex. Ord. No. 6166, § 1, eff. June 10, 1933, as amended by Ex. Ord. No. 6623, eff. Mar. 1, 1934, provided for a general supply fund and reports and audits.

Section 7c-1, act May 14, 1935, ch. 110, § 1, 49 Stat. 234; Ex. Ord. No. 6166, § 1, eff. June 10, 1933, as amended by Ex. Ord. No. 6623, eff. Mar. 1, 1934, related to expenditures incidental to operation of government fuel yards.

Section 7d, act Feb. 27, 1929, ch. 354,§ 4, 45 Stat. 1342, related to Secretary of Treasury's authority to prescribe regulations.

See now section 201 et seq. of this title and sections 471 et seq. and 751 et seq. of Title 40, Public Buildings, Property, and Works.

Effective Date of Repeal

Repeal of sections effective July 1, 1949, see section 605 of act June 30, 1949.

§ 8. Opening bids

Whenever proposals for supplies have been solicited, the parties responding to such solicitation shall be duly notified of the time and place of opening the bids, and be permitted to be present either in person or by attorney, and a record of each bid shall then and there be made.

(R.S. § 3710.)

Codification

R.S. § 3710 is from Res. Jan. 31, 1868, No. 8, 15 Stat. 246.

Exemption of Functions

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

Section Referred to in Other Sections

This section is referred to in sections 252, 260 of this title.

§ 9. Repealed. Feb. 19, 1948, ch. 65, § 11(a), 62 Stat. 25

Section, R.S. § 3717, related to separate proposals for works or material or labor. See now sections 2301 and 2303 to 2305 of Title 10, Armed Forces.

Effective Date of Repeal

Repeal of section became effective 90 days after Feb. 19, 1948, by provisions of section 13 of act Feb. 19, 1948, ch. 65, 62 Stat. 26.

§ 10. Omitted

Codification

Section, act Mar. 3, 1875, ch. 133, § 2, 18 Stat. 455, which related to preferential treatment of American material in contracts for public improvements, was omitted from the Code as superseded and is now covered by sections 10a to 10d of this title.

§ 10a. American materials required for public use

Notwithstanding any other provision of law, and unless the head of the department or independent establishment concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(Mar. 3, 1933, ch. 212, title III, § 2, 47 Stat. 1520.)

SHORT TITLE

Sections 1 to 3 of act Mar. 3, 1933, ch. 212, title III, 47 Stat. 1520, which are classified to sections 10a to 10c of this title, are popularly known as the Buy American Act.

EXEMPTION OF FUNCTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10b, 10c, 10d, 42 of this title; title 50 section 98b.

§ 10b. Contracts for public works; specification for use of American materials; blacklisting contractors violating requirements

(a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 10a of this title: *Provided, however,* That if the head of the department or independent establishment making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a department, bureau, agency, or independent establishment which has made any contract containing the provision required by subsection (a) of this section finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such findings is made public.

(Mar. 3, 1933, ch. 212, title III, § 3, 47 Stat. 1520.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10c, 10d, 42 of this title; title 50 section 98b.

§ 10c. Definition of terms used in sections 10a to 10c

When used in sections 10a to 10c of this title—

(a) The term "United States", when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms "public use", "public building", and "public work" shall mean use by, public building of, and public work of, the United States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands.

(Mar. 3, 1933, ch. 212, title III, § 1, 47 Stat. 1520; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; June 25, 1959, Pub. L. 86-70, § 43, 73 Stat. 151; July 12, 1960, Pub. L. 86-624, § 28, 74 Stat. 419.)

CODIFICATION

Words "the Philippine Islands" in subsec. (b) were deleted as obsolete in view of recognition of independence of the Philippines by Proc. No. 2695, which was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under section 1394.

AMENDMENTS

1960—Subsec. (b). Pub. L. 86-624 eliminated Hawaii.
1959—Subsec. (b). Pub. L. 86-70 eliminated Alaska.

EFFECTIVE DATE

Section 4 of act Mar. 3, 1933, provided: "This title [sections 10a to 10c of this title] shall take effect on the date of its enactment [Mar. 3, 1933], but shall not apply to any contract entered into prior to such effective date."

SEPARABILITY OF PROVISIONS

Section 5 of act Mar. 3, 1933, provided: "If any provision of this Act [sections 10a to 10c of this title], or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application thereof to other persons or circumstances, shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 42 of this title; title 50 section 98b.

§ 10d. Clarification of Congressional intent regarding sections 10a and 10b(a)

In order to clarify the original intent of Congress, hereafter, section 10a of this title and that part of section 10b(a) of this title preceding the words *"Provided, however,"* shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the department or independent establishment concerned shall determine their purchase to be inconsistent with the public interest or their cost to be unreasonable.

(Oct. 29, 1949, ch. 787, title VI, § 633, 63 Stat. 1024.)

EX. ORD. NO. 10582. UNIFORM PROCEDURES FOR DETERMINATIONS

Ex. Ord. No. 10582, eff. Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, eff. Sept. 27, 1962, 27 F.R. 9683, provided:

SECTION 1. As used in this order, (a) the term "materials" includes articles and supplies, (b) the term "executive agency" includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term "bid or offered price of materials of foreign origin" means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

SEC. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

(b) For the purposes of the said act of March 3, 1933 [sections 10a to 10c of this title], and the other laws referred to in the first paragraph of the preamble of this order, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in subsection (c) of this section.

(c) The executive agency concerned shall in each instance determine the amount of the differential referred to in subsection (b) of this section on the basis of one of the following-described formulas, subject to the terms thereof:

(1) The sum determined by computing six per centum of the bid or offered price of materials of foreign origin.

(2) The sum determined by computing ten per centum of the bid or offered price of materials of foreign origin exclusive of applicable duty and all costs incurred after arrival in the United States: provided that when the bid or offered price of materials of foreign origin amounts to less than $25,000, the sum shall be determined by computing ten per centum of such price exclusive only of applicable duty.

SEC. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

(a) To reject any bid or offer for reasons of the national interest not described or referred to in this order; or

(b) To place a fair proportion of the total purchases with small business concerns in accordance with section 302(b) of the Federal Property and Administrative Services Act of 1949, as amended [section 252(b) of this title], section 2(b) of the Armed Services Procurement Act of 1947, as amended [section 151(b) of this title], and section 202 of the Small Business Act of 1953 [section 631 of Title 15, Commerce and Trade]; or

(c) To reject a bid or offer to furnish material of foreign origin in any situation in which the domestic supplier offering the lowest price for furnishing the desired materials undertakes to produce substantially all of such materials in areas of substantial unemployment, as determined by the Secretary of Labor in accordance with such appropriate regulations as he may establish and during such period as the President may determine that it is in the national interest to provide to such areas preference in the award of Government contracts: *Provided*, that nothing in this section shall prevent the rejection of a bid or offered price which is excessive; or

(d) To reject any bid or offer for materials of foreign origin if such rejection is necessary to protect essential national-security interests after receiving advice with respect thereto from the President or from the Director of the Office of Emergency Planning [now Administrator of General Services, see § 3, (12) of Ex. Ord. No. 11725 set out as a note under section 2271 of Title 50 App., War and National Defense]. In providing this advice the Director [Administrator] shall be governed by the principle that exceptions under this section shall be made only upon a clear showing that the payment of a greater differential than the procedures of this section generally prescribe is justified by consideration of national security.

SEC. 4. The head of each executive agency shall issue such regulations as may be necessary to insure that procurement practices under his jurisdiction conform to the provisions of this order.

SEC. 5. This order shall apply only to contracts entered into after the date hereof. In any case in which the head of an executive agency proposing to purchase domestic materials determines that a greater differential than that provided in this order between the cost of such materials of domestic origin and materials of foreign origin is not unreasonable or that the purchase of materials of domestic origin is not inconsistent with the public interest, this order shall not apply. A written report of the facts of each case in which such a determination is made shall be submitted to the President through the Director of the Bureau of the Budget [now Office of Management and Budget] by the official making the determination within 30 days thereafter.

DWIGHT D. EISENHOWER.

§ 11. No contracts or purchases unless authorized or under adequate appropriation; report to the Congress

(a) No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the Departments of the Army, Navy, and Air Force, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year.

(b) The Secretary of Defense shall immediately advise the Congress of the exercise of the authority granted in subsection (a) of this section, and shall report quarterly on the estimated obligations incurred pursuant to the authority granted in subsection (a) of this section.

(R.S. § 3732; June 12, 1906, ch. 3078, 34 Stat. 255; Oct. 15, 1966, Pub. L. 89-687, title VI, § 612(e), 80 Stat. 993.)

CODIFICATION

R.S. § 3732 is from act Mar. 2, 1861, ch. 84, § 10, 12 Stat. 220.

The Department of the Air Force was inserted under the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, and Secretary of Defense Transfer Orders No. 6, eff. Jan. 15, 1948; No. 12 [§ 1(13)], May 14, 1948; No. 39, May 18, 1949, and No. 40 [App. B(115)], July 22, 1949. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces", which in sections 3010 to 3013 and 8010 to 8013 continued the Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

AMENDMENTS

1966—Pub. L. 89-687 designated existing provisions as subsec. (a) and added subsec (b).

1906—Act June 12, 1906, inserted "medical and hospital supplies".

CROSS REFERENCES

Contracts for Indian supplies in advance of appropriations, see section 99 of Title 25, Indians.

Expenditure by any department in excess of appropriations prohibited, see section 665 of Title 31, Money and Finance.

Printing appropriations not to be exceeded, see section 1102 of Title 44, Public Printing and Documents.

Projects under Mexican treaties, authority to enter into contracts beyond amount appropriated, notwithstanding this section, see section 277d-3 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 277d-3.

§ 12. No contract to exceed appropriation

No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.

(R.S. § 3733.)

CODIFICATION

R.S. § 3733 is from act July 25, 1868, ch. 233, § 3, 15 Stat. 177.

CROSS REFERENCES

Contracting officer paying larger amount than specific appropriation, punishment for, see section 435 of Title 18, Crimes and Criminal Procedure.

Foreign military personnel, furnishing facilities for training of without regard to this section, see section 2396 of Title 22, Foreign Relations and Intercourse.

Making of contracts for public buildings on partial appropriations, see section 261 of Title 40, Public Buildings, Property, and Works.

Projects under Mexican treaties, authority to enter into contracts beyond amount appropriated, notwithstanding this section, see section 277d-3 of Title 22, Foreign Relations and Intercourse.

Provisions inapplicable to lease-purchase contracts, see section 356 of Title 40, Public Buildings, Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 277d-3, 2396; title 40 section 356.

§ 13. Contracts limited to one year

Except as otherwise provided, it shall not be lawful for any of the executive departments to make contracts for stationery or other supplies for a longer term than one year from the time the contract is made.

(R.S. § 3735.)

CODIFICATION

R.S. § 3735 is from Res. Jan. 31, 1868, No. 8, 15 Stat. 246; Res. Mar. 24, 1874, No. 6, 18 Stat. 286.

"Except as otherwise provided," was inserted by the Revisers in 1934 edition of the Code.

EXEMPTION OF FUNCTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

SECTION INAPPLICABLE TO ARMED SERVICES AND NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Section inapplicable to procurement of supplies or services by Armed Services and National Aeronautics and Space Administration, see section 2314 of Title 10, Armed Forces.

CROSS REFERENCES

Contracts by Secretary of the Treasury for manufacture of distinctive paper for United States securities, see section 418 of Title 31, Money and Finance.

General Services Administration, section inapplicable to procurement of property or services, see section 260 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 260 of this title; title 10 section 2314.

§ 13a. Repealed. Pub. L. 86–682, § 12(c), Sept. 2, 1960, 74 Stat. 710

Section, Joint Res. Mar. 24, 1874, No. 6, 18 Stat. 286, excepted mail bags, mail locks, and keys from the provisions of section 13 of this title.

§ 14. Restriction on purchases of land

No land shall be purchased on account of the United States, except under a law authorizing such purchase.

(R.S. § 3736.)

CODIFICATION

R.S. § 3736 is from act May 1, 1820, ch. 52, § 7, 3 Stat. 568.

CROSS REFERENCES

Provisions inapplicable to lease-purchase contracts, see section 356 of Title 40, Public Buildings, Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 section 356.

§ 15. Transfers of contracts; assignments of claims; set-off against assignee

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency: *Provided*, 1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned; 2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment; 3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing; 4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together

with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section, shall constitute a valid assignment for all purposes.

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

Any contract of the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of (1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract, (2) fines, (3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract), or (4) taxes, social security contributions, or the withholding or nonwithholding of taxes or social security contributions, whether arising from or independently of such contract.

Except as herein otherwise provided, nothing in this section, shall be deemed to affect or impair rights or obligations heretofore accrued.

(R.S. § 3737; Oct. 9, 1940, ch. 779, § 1, 54 Stat. 1029; May 15, 1951, ch. 75, 65 Stat. 41.)

CODIFICATION

R.S. § 3737 is from act July 17, 1862, ch. 200, § 14, 12 Stat. 596.

AMENDMENTS

1951—Act May 15, 1951, made it clear that a bank or other financing institution taking an assignment of claims pursuant to this section would not be subject to later recovery by the Government of amounts previously paid to the bank by the assignee except in cases of fraud.

1940—Act Oct. 9, 1940, added the second and third paragraphs of this section.

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, the members of the Commission, and the officers and components of the Commission were transferred to and vested in the Administrator of the Energy Research and Development Administration, with certain exceptions, by Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233. See section 5814 of Title 42, The Public Health and Welfare.

NON-APPLICABILITY OF NATIONAL EMERGENCIES ACT

The provisions of the National Emergencies Act (Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255) shall not apply to the powers and authorities conferred by this section and actions taken hereunder, see section 1651 of Title 50, War and National Defense.

MONEYS DUE UNDER LETTERS OF COMMITMENT ISSUED IN CONNECTION WITH DISPOSITION OF SURPLUS AGRICULTURAL COMMODITIES

Moneys due under letters of commitment issued against funds or guaranties of funds supplied by Commodity Credit Corporation in connection with disposition of surplus agricultural commodities to foreign countries, as assignable under the Assignment of Claims Act of 1940, which constitutes this section and section 203 of Title 31, Money and Finance, see section 1702 of Title 7, Agriculture.

CROSS REFERENCES

Assignment of claims, generally, see section 203 of Title 31, Money and Finance.

Renegotiation of war and defense contracts, see sections 1193 et seq. and 1211 et seq. of Title 50, Appendix, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 2392; title 50 section 1651; title 50 App. section 1215.

§ 16. Repealed. Oct. 21, 1941, ch. 452, 55 Stat. 743

Section, R.S. § 3744; acts June 15, 1917, ch. 29, § 1, 40 Stat. 198; Feb. 4, 1929, ch. 146, § 1, 45 Stat. 1147, related to requirement that contracts made by the Secretaries of War, Navy and Interior be in writing, and that copies thereof be filed in the returns office of the Department of the Interior.

§§ 16a to 16d. Omitted

CODIFICATION

Section 16a, acts June 25, 1910, ch. 431, § 23, 36 Stat. 861; May 18, 1916, ch. 125, § 1, 39 Stat. 126; Jan. 12, 1927, ch. 27, 44 Stat. 936, which authorized purchases by Department of Interior without compliance with section 16 of this title, was omitted from the Code as obsolete in view of the repeal of section 16 of this title.

Section 16b, acts Apr. 17, 1936, ch. 233, § 1, 49 Stat. 1226; May 18, 1937, ch. 223, 50 Stat. 181; May 17, 1938, ch. 236, § 1, 52 Stat. 393; June 16, 1939, ch. 208, § 1, 53 Stat. 834; June 18, 1940, ch. 396, § 1, 54 Stat. 474, which authorized purchases by Botanic Garden without compliance with section 16 of this title, was omitted from the Code as obsolete in view of the repeal of section 16 of this title.

Section 16c, act May 13, 1926, ch. 294, § 1, 44 Stat. 547, which authorized purchases by Architect of Capitol without compliance with section 16 of this title,

was omitted from the Code as obsolete in view of the repeal of section 16 of this title.

Section 16d, act Aug. 4, 1939, ch. 418, § 13, 53 Stat. 1197, which authorized purchases by Bureau of Reclamation without compliance with section 16 of this title, was omitted from the Code as obsolete in view of the repeal of section 16 of the title.

§§ 17 to 19. Repealed. Oct. 21, 1941, ch. 452, 55 Stat. 743

Section 17, R.S. § 3745, provided that an affidavit be affixed to the return of contract required by section 16 of this title.

Section 18, R.S. § 3746, provided punishment for failure to make returns of contracts as required by sections 16 and 17 of this title.

Section 19, R.S. § 3747, imposed duty on Secretaries of War, Navy, and Interior to furnish officers with letters of instruction relating to their duties under sections 17 and 18, contract forms, and affidavits, to insure uniformity.

§ 20. Deposit of contracts

All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited promptly in the General Accounting Office: *Provided*, That this section shall not apply to the existing laws in regard to the contingent funds of Congress.

(R.S. § 3743; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; July 31, 1894, ch. 174, § 18, 28 Stat. 210; June 10, 1921, ch. 18, §§ 304, 310, 42 Stat. 24, 25.)

CODIFICATION

R.S. § 3743 is from act July 16, 1798, ch. 85, § 6, 1 Stat. 610.

Section was formerly classifed to section 219 of title 5 prior to the general revision and reenactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1894—Act July 31, 1894, amended the section to read "shall be deposited promptly in the offices of the Auditors of the Treasury, according to the nature of the contracts: Provided, That this section shall not apply to the existing laws in regard to the contingent funds of Congress."

1877—Act Feb. 27, 1877, inserted after the words "in the office of the First Comptroller of the Treasury of the United States" the words "the Second Comptroller of the Treasury of the United States, or the Commissioner of Customs, respectively, according to the nature thereof."

TRANSFER OF FUNCTIONS

The offices of the six auditors of the Treasury Department were abolished and all powers and duties conferred or imposed by law upon such officers were transferred and vested in the General Accounting Office by act June 10, 1921.

CROSS REFERENCES

Copies of all contracts made by Commissioner of Indian Affairs to be furnished General Accounting Office, see section 96 of Title 25, Indians.

General Accounting Office, see section 41 et seq. of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20a, 20b, 21 of this title; title 16 section 799.

§ 20a. Exemption from deposit of contracts concerning national-forest lands

Permits, contracts, agreements, or other instruments requiring payments into the Treasury of the United States on account of sale of national-forest products, use of national-forest land, or other sources of national-forest revenue, including contributions by cooperators in connection with authorized activities of the Forest Service, shall be exempt from the provisions of section 20 of this title, when the permit or other instrument does not require payment to the Government in excess of $300 in any one fiscal year.

(June 15, 1940, ch. 367, 54 Stat. 398.)

§ 20b. Exemption from deposit of leases, contracts, etc., concerning use of lands or waters under jurisdiction of Department of Interior

Leases, permits, licenses, contracts, agreements, and other instruments providing for payments to the United States on account of the use of lands or waters under the jurisdiction of the Department of the Interior, or on account of the sale of products of such lands or waters, or on account of other transactions incident to the administration of such lands or waters, including contributions by cooperators, but excluding sales of used equipment, shall be exempt from the provisions of section 20 of this title, when the lease or other instruments do not require payment to the Government in excess of $300 in any one fiscal year: *Provided, however*, That the Secretary of the Interior may prescribe from time to time regulations requiring that originals or copies of any class or group of documents within the foregoing exemption, in the circumstances and upon the conditions designated by him in such regulations, shall be deposited in the General Accounting Office for audit purposes.

(Nov. 28, 1943, ch. 328, 57 Stat. 592.)

§ 21. Rules and regulations as to contract deposits

The heads of the several executive departments and the proper officers of other Government establishments, not within the jurisdiction of any executive department, shall make appropriate rules and regulations to secure a proper administrative examination of all accounts sent to them as required by section 78 of title 31, before their transmission to the General Accounting Office, and for the execution of other requirements of section 20 of this title, in so far as the same relate to the several departments or establishments.

(July 31, 1894, ch. 174, § 22, 28 Stat. 210; June 10, 1921, ch. 18, §§ 304, 310, 42 Stat. 24, 25.)

REFERENCES IN TEXT

In the original "section 20" read "this Act" meaning act July 31, 1894. For distribution of such act in this Code, see Tables volume.

TRANSFER OF FUNCTIONS

The offices of the six auditors of the Treasury Department were abolished and all powers and duties conferred or imposed by law upon such officers were transferred and vested in the General Accounting Office by act June 10, 1921.

CROSS REFERENCES

Comptroller General authorized to prescribe systems and procedure for the administrative examination of accounts, see section 49 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 66b.

§ 22. Interest of Member of Congress

In every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. Nor shall the provisions of this section apply to any contracts or agreements heretofore or hereafter entered into under the Agricultural Adjustment Act [7 U.S.C. 601 et seq.], the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Federal Farm Mortgage Corporation Act, the Farm Credit Act of 1933, and the Home Owners' Loan Act of 1933 [12 U.S.C. 1461 et seq.], and shall not apply to contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers: *Provided*, That such exemption shall be made a matter of public record.

(R.S. § 3741; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; Jan. 25, 1934, ch. 5, 48 Stat. 337; June 27, 1934, ch. 847, title V, § 510, 48 Stat. 1264; Aug. 26, 1937, ch. 821, 50 Stat. 838.)

REFERENCES IN TEXT

The Agricultural Adjustment Act, referred to in text, is title I of act May 12, 1933, ch. 25, 48 Stat. 31, which is classified generally to chapter 26 (§ 601 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 7 and Tables volume.

The Federal Farm Loan Act, referred to in text, is act July 17, 1916, ch. 245, 39 Stat. 360, as amended, and was classified principally to sections 641 et seq. of Title 12, Banks and Banking. The Federal Farm Loan Act, as amended, was repealed by section 5.26(a) of the Farm Credit Act of 1971, Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 624. Section 5.26(a) of the Farm Credit Act of 1971 also provided that all references in other legislation to the Acts repealed thereby "shall be deemed to refer to comparable provisions of this Act". For further details, see notes under section 2001 of Title 12. For complete classification of the Federal Farm Loan Act to the Code prior to such repeal, see Tables volume.

The Emergency Farm Mortgage Act of 1933, referred to in text, is title II of act May 12, 1933, ch. 25, 48 Stat. 31. Such title II was substantially repealed by act June 30, 1947, ch. 166, title II, § 206(c), 61 Stat. 208; act Aug. 6, 1953, ch. 335, § 19, 67 Stat. 400; act Oct. 4, 1961, Pub. L. 87-353, § 3(a), (b), (w), 75 Stat. 773, 774; act Dec. 10, 1971, Pub. L. 92-181, title V, § 5.26(a), 85 Stat. 624. For complete classification of this Act to the Code, see Tables volume.

The Federal Farm Mortgage Corporation Act, referred to in text, is act Jan. 31, 1934, ch. 7, 48 Stat. 344, which enacted section 992a of Title 12, Banks and Banking, and amended sections 347, 355, 723, 772, 781, 897, 1016, 1020, 1020a, 1020b, 1020c, 1020d to 1020h, 1061, 1131i, 1138b and 1138d of Title 12 has been substantially repealed. For complete classification of this Act to the Code, see Tables volume.

The Farm Credit Act of 1933, referred to in text, is act June 16, 1933, ch. 98, 48 Stat. 2, as amended, and was classified principally to subchapter IV (§ 1131 et seq.) of chapter 7 of Title 12, Banks and Banking. The Farm Credit Act of 1933, as amended, was repealed by section 5.26(a) of the Farm Credit Act of 1971, Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 624. Section 5.26(a) of the Farm Credit Act of 1971 also provided that all references in other legislation to the Acts repealed thereby "shall be deemed to refer to comparable provisions of this Act". For further details, see notes under section 2001 of Title 12. For complete classification of the Farm Credit Act of 1933 to the Code prior to such repeal, see Tables volume.

The Home Owners' Loan Act of 1933, referred to in text, is act June 13, 1933, ch. 64, 48 Stat. 128, which is classified generally to chapter 12 (§ 1461 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1461 of Title 12 and Tables volume.

CODIFICATION

The words "or Delegate to" following "no Member of" were omitted since the last Delegates to Congress were from the Territories of Alaska and Hawaii prior to their admission as States in 1959.

R.S. § 3741 is from act Apr. 21, 1808, ch. 48, § 3, 2 Stat. 484.

AMENDMENTS

1937—Act Aug. 26, 1937, added the provision at the end beginning with "and shall not apply".

1934—Act June 27, 1934, inserted "the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Federal Farm Mortgage Corporation Act, the Farm Credit Act of 1933, and the Home Owners' Loan Act of 1933".

Act Jan. 25, 1934, added "Nor shall the provision of this section apply to any contracts or agreements heretofore or hereafter entered into under the Agricultural Adjustment Act".

1877—Act Feb. 27, 1877, inserted "or Delegate to" after "that no Member of".

CROSS REFERENCES

Acquisition of land for flood control, applicability of this section, see section 702m of Title 33, Navigation and Navigable Waters.

Commodity Credit Corporation, agreements of, except agreements with farmers participating in Corporation's program, subject to this section, see section 714*l* of Title 15, Commerce and Trade.

Contracts by Members of Congress and exemptions with respect to certain contracts, see sections 431 and 433 of Title 18, Crimes and Criminal Procedure.

Secretary of State contracts with foreign or domestic agencies for purposes of United States exchange program excepted from this section, see section 1472 of Title 22, Foreign Relations and Intercourse.

Section inapplicable to crop-insurance agreements made under the Federal Crop Insurance Act, see section 1514 of Title 7, Agriculture.

Section inapplicable to loans or payments made under sections 590h and 590*o* of Title 16, and the Agricultural Adjustment Act of 1938, except section 1383, see section 1386 of Title 7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1514; title 15 section 714*l*; title 22 sections 1472, 2676; title 33 section 702m.

§ 23. Orders or contracts for material placed with Government-owned establishments deemed obligations

All orders or contracts for work or material or for the manufacture of material pertaining to approved projects heretofore or hereafter placed with Government-owned establishments shall be considered as obligations in the same manner as provided for similar orders or contracts placed with commercial manufacturers or private contractors, and the appropriations

shall remain available for the payment of the obligations so created as in the case of contracts or orders with commercial manufacturers or private contractors.

(June 5, 1920, ch. 240, 41 Stat. 975; July 1, 1922, ch. 259, 42 Stat. 812; June 2, 1937, ch. 293, 50 Stat. 245.)

AMENDMENTS

1937—Act June 2, 1937, continued this section in effect.

1922—Act July 1, 1922, inserted "for work or material near the beginning," "or contracts" following "similar orders" and "or private contractors" following "commercial manufacturers" in two places.

§ 24. Contracts for transportation of moneys, bullion, coin, and securities

Whenever it is practicable contracts for the transportation of moneys, bullion, coin, notes, bonds, and other securities of the United States, and paper shall be let to the lowest responsible bidder therefor, after notice to all parties having means of transportation.

(July 7, 1884, ch. 332, 23 Stat. 204.)

CODIFICATION

Section is from Sundry Civil Appropriation Act July 7, 1884, fiscal year 1885.

§ 24a. Omitted

CODIFICATION

Section, acts June 16, 1933, ch. 101, § 5, 48 Stat. 305; Apr. 24, 1935, ch. 78, 49 Stat. 161; Aug. 29, 1935, ch. 816, 49 Stat. 991, which provided for cancellation on or before March 31, 1936, of contracts for transportation entered into prior to June 16, 1933, was omitted from the Code as executed.

§ 25. Repealed. Feb. 19, 1948, ch. 65, § 11(a), 62 Stat. 25

Section, R.S. § 3729, related to contracts for bunting. See now section 2301 et seq. of Title 10, Armed Forces.

§ 26. Repealed. June 30, 1949, ch. 288, title VI, § 602 (a)(26), 63 Stat. 401, renumbered Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583

Section, acts Mar. 4, 1915, ch. 147, § 5, 38 Stat. 1161; May 29, 1928, ch. 901, § 1(5), 45 Stat. 986, related to exchange of typewriters and adding machines in part payment for new machines. See now section 481 of Title 40, Public Buildings, Property, and Works.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1949, see section 605 of act June 30, 1949.

§ 27. Repealed. Oct. 31, 1951, ch. 654, § 1(109), 65 Stat. 705

Section, act June 5, 1920, ch. 235, § 7, 41 Stat. 947, which related to disposition of typewriting machines by Government departments and establishments. See now sections 481, 483, and 484 of Title 40, Public Buildings, Property, and Works.

§§ 28 to 34. Omitted

CODIFICATION

Section 28, act June 16, 1934, ch. 553, § 1, 48 Stat. 974, which related to adjustment and settlement of claims by persons who entered into contracts with the United States prior to Aug. 10, 1933 and claim loss due to compliance with codes of fair competition, was omitted from the Code as executed.

Section 29, act June 16, 1934, ch. 553, § 2, 48 Stat. 975, which related to the amount allowed for settlement, was omitted from the Code as executed.

Section 30, act June 16, 1934, ch. 553, § 3, 48 Stat. 975, which related to limitation on the amount of profits, was omitted from the Code as executed.

Section 31, act June 16, 1934, ch. 553, § 4, 48 Stat. 975, which related to the time for presentment of claims, was omitted from the Code as executed.

Section 32, act June 16, 1934, ch. 553, § 5, 48 Stat. 975, which authorized appropriations for the settlement of claims, was omitted from the Code as executed.

Section 33, act June 16, 1934, ch. 553, § 6, 48 Stat. 975, which related to the procedure for settlement of claims and reservation of the right to prosecute for fraud and criminal conduct, was omitted from the Code as executed.

Section 34, act Aug. 29, 1935, ch. 815, 49 Stat. 990, which provided that bids made subject to codes of fair competition prior to Aug. 29, 1935 should not be rejected where bidder agreed to be subject to Acts of Congress requiring observance of minimum wages, maximum hours, or limitations as to age of employees in performance of contracts, with federal agencies was omitted from the Code as executed.

§ 35. Contracts for materials, etc., exceeding $10,000; representations and stipulations

In any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations:

(a) That the contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week: *Provided*, That the provisions of this subsection shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs (1) or (2) of subsection (b) of section 207 of title 29;

(d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or

production or furnishing of any of the materials, supplies, articles, or equipment included in such contract; and

(e) That no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

(June 30, 1936, ch. 881, § 1, 49 Stat. 2036; May 13, 1942, ch. 306, 56 Stat. 277.)

AMENDMENTS

1942—Subsec. (c). Act May 13, 1942, added proviso.

SHORT TITLE

Sections 35 to 45 of this title are popularly known as the Walsh-Healey Act.

EXCEPTIONS AND EXEMPTIONS

7 F.R. 9399 (amending Exemption Order Apr. 21, 1942, 7 F.R. 3003), which exempted female persons under 18 years of age from the provisions of subsec. (d) of this section, was superseded by 10 F.R. 10438.

CONTRACTING AUTHORITY OF GOVERNMENT AGENCIES IN CONNECTION WITH NATIONAL DEFENSE FUNCTIONS

Provisions of sections 35 to 45 of this title as applicable to Government agencies exercising certain contracting authority in connection with national-defense functions, see section 13 of Ex. Ord. No. 10789, set out as a note under section 1431 of Title 50, War and National Defense.

CROSS REFERENCES

Contracts made after June 30, 1940, for construction or alteration of naval vessels to be in accordance with sections 35 to 45 of this title, see section 7299 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36, 37, 38, 39, 40, 41, 42, 43, 43a, 44, 45, 258 of this title; title 10 sections 2304, 7299; title 39 section 410.

ACT REFERRED TO IN OTHER SECTIONS

The Walsh-Healey Act is referred to in sections 258, 356 of this title; title 10 sections 2304, 7299; title 29 sections 251 to 256, 258, 259, 262, 653; title 30 section 846; title 39 section 410; title 40 section 329.

§ 36. Liability for contract breach; cancellation; completion by Government agency; employee's wages

Any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 35 of this title shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of $10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 35 of this title may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

(June 30, 1936, ch. 881, § 2, 49 Stat. 2037.)

CROSS REFERENCES

Conduct and argument of cases by Attorney General, see section 518 of Title 28, Judiciary and Judicial Procedure.

Power of Solicitor General to assist Attorney General, see section 505 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 38, 39, 40, 41, 42, 43, 43a, 44, 45, 258 of this title; title 10 sections 2304, 7299; title 39 section 410.

§ 37. Distribution of list of persons breaching contract; future contracts prohibited

The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by sections 35 to 45 of this title. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

(June 30, 1936, ch. 881, § 3, 49 Stat. 2037.)

CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note under that section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38, 39, 40, 41, 42, 43, 43a, 44, 45, 258 of this title; title 10 sections 2304, 7299; title 39 section 410.

§ 38. Administration of Walsh-Healey provisions; officers and employees; appointment; investigations; rules and regulations

The Secretary of Labor is authorized and directed to administer the provisions of sections 35 to 45 of this title and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of said sections and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, subject to chapter 51 and subchapter III of chapter 53 of title 5, an administrative officer, and such attorneys and experts, and other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of sections 35 to 45 of this title. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as provided in sections 35 to 45 of this title, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of sections 35 to 45 of this title.

(June 30, 1936, ch. 881, § 4, 49 Stat. 2038; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

CODIFICATION

Provisions of second sentence that authorized the Secretary to appoint an administrative officer and such attorneys and experts "without regard to the provisions of the civil service laws" were omitted as obsolete. Such appointments are now subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted reference to the "Classification Act of 1949" for the "Classification Act of 1923".

REPEALS

Act Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

For transfer of functions of all other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note under that section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 39, 40, 41, 42, 43, 43a, 44, 45, 258, 353 of this title; title 10 sections 2304, 7299; title 39 section 410; title 40 section 333.

§ 39. Hearings on Walsh-Healey provisions by Secretary of Labor; witness fees; failure to obey order; punishment

Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of sections 35 to 45 of this title, and on complaint of a breach or violation of any representation or stipulation as provided in said sections, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of sections 35 to 45 of this title.

(June 30, 1936, ch. 881, § 5, 49 Stat. 2038; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

As originally enacted, the words ", or the district court of the United States for the District of Columbia," were set out following "Territory or possession". Act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia". The words "United States District Court for the District of Columbia" have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of title 28 which states that "the District of Columbia constitutes one judicial district".

CROSS REFERENCES

Criminal contempt, see sections 401, 402, 3285, 3691, 3771, and 3772 of Title 18, Crimes and Criminal Procedure.

Exemptions and exceptions to section 35 of this title, see note under that section.

Per diem and mileage of witnesses, see section 1821 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Findings by the Court, see rule 52, Title 28, Appendix, Judiciary and Judicial Procedure.

Subpoena, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Contempt, see rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

Subpoena, see rule 17.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 38, 40, 41, 42, 43, 43a, 44, 45, 258, 353 of this title; title 10 sections 2304, 7299; title 33 section 941; title 39 section 410; title 40 section 333.

§ 40. Exceptions from Walsh-Healey provisions; modification of contracts; variations; overtime; suspension of representations and stipulations

Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 35 of this title will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of sections 35 to 45 of this title respecting minimum rates of pay and maximum hours of labor or the extent of the application of said sections to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected: *Provided*, That whenever in his judgment such course is in the public interest, the President is authorized to suspend any or all of the representations and stipulations contained in section 35 of this title.

(June 30, 1936, ch. 881, § 6, 49 Stat. 2038; June 28, 1940, ch. 440, title I, § 13, 54 Stat. 681.)

AMENDMENTS

1940—Act June 28, 1940, added the proviso.

CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note under that section.

President's authority to make exceptions in case of contracts for construction, alteration, etc. of naval vessels, see section 7299 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 38, 39, 41, 42, 43, 43a, 44, 45, 258 of this title; title 10 sections 2304, 7299; title 39 section 410.

§ 41. "Person" defined in Walsh-Healey provisions

Whenever used in sections 35 to 45 of this title, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(June 30, 1936, ch. 881, § 7, 49 Stat. 2039.)

CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note under that section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 38, 39, 40, 42, 43, 43a, 44, 45, 258 of this title; title 10 sections 2304, 7299; title 39 section 410.

§ 42. Effect of sections 35 to 45 on other laws

The provisions of sections 35 to 45 of this title shall not be construed to modify or amend Title III of the act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved May 3, 1933 (commonly known as the Buy American Act), nor shall the provisions of sections 35 to 45 of this title be construed to modify or amend the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time [40 U.S.C. 276a et seq.], nor the labor provisions of Title II of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935; nor shall the provisions of sections 35 to 45 of this title be construed to modify or amend chapter 307 and section 4162 of title 18.

(June 30, 1936, ch. 881, § 8, 49 Stat. 2039.)

REFERENCES IN TEXT

Title III of an act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved May 3, 1933 (commonly known as the Buy American Act), referred to in text, is act Mar. 3, 1933, ch. 212, title III, 47 Stat. 1520, popularly known as the Buy American Act, which enacted sections 10a to 10c of this title and enacted provisions set out as notes under section 10c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10a of this title and Tables volume.

The Act approved Mar. 3, 1931 (commonly known as the Bacon-Davis Act), referred to in text, probably means act Mar. 3, 1931, ch. 411, 46 Stat. 1494, popularly known as the Davis-Bacon Act, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables volume.

The National Industrial Recovery Act, referred to in text, is act June 16, 1933, ch. 90, 48 Stat. 195. Title II of the National Industrial Recovery Act was classified principally to subchapter I (§ 401 et seq.) of chapter 8

of Title 40, Public Buildings, Property, and Works, and was terminated June 30, 1943, by act June 27, 1942, ch. 450, § 1, 56 Stat. 410. For complete classification of this Act to the Code, see Tables volume.

Section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935, referred to in text, is act Apr. 8, 1935, ch. 48, § 7, 49 Stat. 115, which was not classified to the Code.

CODIFICATION

"Chapter 307 and section 4162 of title 18" was substituted for "the Act entitled 'An Act to provide for the diversification of employment of Federal prisoners, for their training and schooling in trades and occupations, and for other purposes', approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934" on authority of act June 25, 1948, ch. 645, 62 Stat. 683, section 1 of which enacted Title 18, Crimes and Criminal Procedure. Prior to the enactment of Title 18, the act of May 27, 1930, as amended, had been classified to sections 744a to 744n of Title 18.

CROSS REFERENCES

Construction of naval vessels as governed by sections 35 to 45 of this title, see section 7299 of Title 10, Armed Forces.

Exemptions and exceptions to section 35 of this title, see note under that section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 38, 39, 40, 41, 43, 43a, 44, 45, 258 of this title; title 10 sections 2304, 7299; title 39 section 410.

§ 43. Sections 35 to 45 not applicable to certain contracts

Sections 35 to 45 of this title shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall they apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in said sections shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934 [47 U.S.C. 151 et seq.].

(June 30, 1936, ch. 881, § 9, 49 Stat. 2039.)

REFERENCES IN TEXT

The Communication Act of 1934, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to chapter 5 (§ 151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code see Tables volume.

CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note under that section.

President's authority to make exceptions in case of construction contracts for naval vessels, see section 7299 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 38, 39, 40, 41, 42, 43a, 44, 45, 258 of this title; title 10 sections 2304, 7299; title 39 section 410; title 50 App. section 1152.

§ 43a. Administrative procedure provisions

(a) Applicability

Notwithstanding any provision of section 553 of title 5, subchapter II of chapter 5, and chapter 7, of title 5 shall be applicable in the administration of sections 35 to 39 and 41 to 43 of this title.

(b) Wage determination; administrative review

All wage determinations under section 35(b) of this title shall be made on the record after opportunity for a hearing. Review of any such wage determination, or of the applicability of any such wage determination, may be had within ninety days after such determination is made in the manner provided in chapter 7 of title 5 by any person adversely affected or aggrieved thereby, who shall be deemed to include any manufacturer of, or regular dealer in, materials, supplies, articles or equipment purchased or to be purchased by the Government from any source, who is in any industry to which such wage determination is applicable.

(c) Judicial review

Notwithstanding the inclusion of any stipulations required by any provision of sections 35 to 45 of this title in any contract subject to said sections, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the terms "locality", "regular dealer", "manufacturer", and "open market".

(June 30, 1936, ch. 881, § 10, as added June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308.)

CODIFICATION

"Section 553 of title 5", "subchapter II of chapter 5, and chapter 7, of title 5", and "chapter 7 of title 5" were substituted for "section 1003 of title 5", "such Act [meaning the Administrative Procedure Act]", and "section 1009 of title 5" respectively, on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 38, 39, 40, 41, 42, 43, 44, 45, 258 of this title; title 10 sections 2304, 7299; title 39 section 410.

§ 44. Separability of Walsh-Healey provisions

If any provision of sections 35 to 45 of this title, or the application thereof to any persons or circumstances, is held invalid, the remainder of said sections, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

(June 30, 1936, ch. 881, § 11, formerly § 10, 49 Stat. 2039, renumbered June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308.)

CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note under that section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 38, 39, 40, 41, 42, 43, 43a, 45, 258 of this title; title 10 sections 2304, 7299; title 39 section 410.

§ 45. Effective date of Walsh-Healey provisions; exception as to representations with respect to minimum wages

Sections 35 to 45 of this title shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from June 30, 1936: *Provided, however,* That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(June 30, 1936, ch. 881, § 12, formerly § 11, 49 Stat. 2039, renumbered June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308.)

CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note under that section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 38, 39, 40, 41, 42, 43, 43a, 44, 258 of this title; title 10 sections 2304, 7299; title 39 section 410.

§ 46. Committee for Purchase from the Blind and Other Severely Handicapped

(a) Establishment

There is established a committee to be known as the Committee for Purchase from the Blind and Other Severely Handicapped (hereafter in sections 46 to 48c of this title referred to as the "Committee"). The Committee shall be composed of fifteen members appointed as follows:

(1) The President shall appoint as a member one officer or employee from each of the following: The Department of Agriculture, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Health, Education, and Welfare, the Department of Commerce, the Veterans' Administration, the Department of Justice, the Department of Labor, and the General Services Administration. The head of each such department and agency shall nominate one officer or employee in his department or agency for appointment under this paragraph.

(2)(A) The President shall appoint one member from persons who are not officers or employees of the Government and who are conversant with the problems incident to the employment of the blind.

(B) The President shall appoint one member from persons who are not officers or employees of the Government and who are conversant with the problems incident to the employment of other severely handicapped individuals.

(C) The President shall appoint one member from persons who are not officers or employees of the Government and who represent blind individuals employed in qualified nonprofit agencies for the blind.

(D) The President shall appoint one member from persons who are not officers or employees of the Government and who represent severely handicapped individuals (other than blind individuals) employed in qualified nonprofit agencies for other severely handicapped individuals.

(b) Vacancy

A vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made.

(c) Chairman

The members of the Committee shall elect one of their number to be Chairman.

(d) Terms

(1) Except as provided in paragraphs (2), (3), and (4), members appointed under paragraph (2) of subsection (a) of this section shall be appointed for terms of five years. Any member appointed to the Committee under such paragraph may be reappointed to the Committee if he meets the qualifications prescribed by that paragraph.

(2) Of the members first appointed under paragraph (2) of subsection (a) of this section—

(A) one shall be appointed for a term of three years,

(B) one shall be appointed for a term of four years, and

(C) one shall be appointed for a term of five years,

as designated by the President at the time of appointment.

(3) Any member appointed under paragraph (2) of subsection (a) of this section to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member appointed under such paragraph may serve after the expiration of his term until his successor has taken office.

(4) The member first appointed under paragraph (2)(B) of subsection (a) of this section shall be appointed for a term of three years.

(e) Pay and travel expenses

(1) Except as provided in paragraph (2), members of the Committee shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of services for the Committee.

(2) Members of the Committee who are officers or employees of the Government shall receive no additional pay on account of their service on the Committee.

(3) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5.

(f) Staff

(1) Subject to such rules as may be adopted by the Committee, the Chairman may appoint and fix the pay of such personnel as the Committee determines are necessary to assist it in carrying out its duties and powers under sections 46 to 48c of this title.

(2) Upon request of the Committee, the head of any entity of the Government is authorized to detail, on a reimbursable basis, any of the personnel of such entity to the Committee to

assist it in carrying out its duties and powers under section 46 to 48c of this title.

(3) The staff of the Committee appointed under paragraph (1) shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title 5 relating to classification and General Schedule pay rates.

(g) Obtaining official data

The Committee may secure directly from any entity of the Government information necessary to enable it to carry out sections 46 to 48c of this title. Upon request of the Chairman of the Committee, the head of such Government entity shall furnish such information to the Committee.

(h) Administrative support services

The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(i) Annual report

The Committee shall, not later than December 31 of each year, transmit to the President and to the Congress a report which shall include the names of the Committee members serving in the preceding fiscal year, the dates of Committee meetings in that year, a description of its activities under sections 46 to 48c of this title in that year, and any recommendations for changes in sections 46 to 48c of this title which it determines are necessary.

(June 25, 1938, ch. 697, § 1, 52 Stat. 1196; June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 77; July 25, 1974, Pub. L. 93-358, § 1(1), (2), 88 Stat. 392, 393; Apr. 21, 1976, Pub. L. 94-273, § 8(2), 90 Stat. 378.)

REFERENCES IN TEXT

The General Schedule, referred to in subsecs. (e)(1) and (f)(3), is set out under section 5332 of Title 5, Government Organization and Employees.

Section 5703 of title 5, referred to in subsec. (e)(3), was amended generally by Pub. L. 94-22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain a subsec. (b).

AMENDMENTS

1976—Subsec. (i). Pub. L. 94-273 substituted "December 31" for "September 30".

1974—Subsec. (a). Pub. L. 93-358, § 1(1)(A), (B), substituted "Committee for Purchase from Blind and Other Severely Handicapped" for "Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped" and "fifteen" for "fourteen" in provisions preceding par. (1).

Subsec. (a)(2). Pub. L. 93-358, § 1(1)(C), (D), struck out "and other severely handicapped individuals" following "employment of the blind" in subpar. (A), added subpar. (B), and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (d)(1). Pub. L. 93-358, § 1(2)(A), substituted "paragraphs (2), (3), and (4)" for "paragraphs (2) and (3)".

Subsec. (d)(4). Pub. L. 93-358, § 1(2)(B), added subsec. (d)(4).

1971—Pub. L. 92-28, in substituting subsec. (a) to (i) for former paragraph, among other changes: renamed Committee on Purchases of Blind-made Products as Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped; increased membership of Committee from seven to fourteen members; provided for appointments from Departments of Defense, Air Force, Health, Education, and Welfare, Justice, and Labor and from Veterans' Administration and General Services Administration; eliminated appointments from Treasury Department and Department of Interior; substituted appointment from Department of the Army for appointment from War Department; required one appointee to be also conversant with problems incident to employment of other severely handicapped individuals; substituted requirement that such appointment be from persons not officers or employees of the Government rather than that he be a private citizen; reenacted provision for Presidential appointment; substituted subsec. (e) pay and travel expenses provisions for former requirement for service of Committee members without additional compensation; incorporated in subsec. (c) provision for selection of a Chairman, substituting "election" for "designation"; and added provisions incorporated in subsecs. (a)(1) (for nomination by head of each department and agency of one officer or employee of the department or agency for appointment under par. (1)), (a)(2)(B), (C), (b), (d), and (f) to (i).

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 92-28 provided that: "The amendment made by the first section of this Act [amending sections 46 to 48 and enacting sections 48a to 48c of this title] shall take effect on the first day of the first month which begins more than thirty days after the date of enactment of this Act [June 23, 1971]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 48a, 48b, 48c of this title.

§ 47. Duties and powers of the Committee

(a) Procurement list: publication in Federal Register; additions and removals

(1) The Committee shall establish and publish in the Federal Register a list (hereafter in sections 46 to 48c of this title referred to as the "procurement list") of—

(A) the commodities produced by any qualified nonprofit agency for the blind or by any qualified nonprofit agency for other severely handicapped, and

(B) the services provided by any such agency,

which the Committee determines are suitable for procurement by the Government pursuant to sections 46 to 48c of this title. Such list shall be established and published in the Federal Register before the expiration of the thirty-day period beginning on Aug. 1, 1971, and shall initially consist of the commodities contained, on such date, in the schedule of blind-made products issued by the former Committee on Purchases of Blind-Made Products under its regulations.

(2) The Committee may, by rule made in accordance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, add to and remove from the procurement list commodities so produced and services so provided.

(b) Fair market price; price revisions

The Committee shall determine the fair market price of commodities and services which are contained on the procurement list and which are offered for sale to the Government by any qualified nonprofit agency for the blind or any such agency for other severely handicapped. The Committee shall also revise from time to time in accordance with changing

market conditions its price determinations with respect to such commodities and services.

(c) Central nonprofit agency; designation

The Committee shall designate a central nonprofit agency or agencies to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for commodities and services on the procurement list among qualified nonprofit agencies for the blind or such agencies for other severely handicapped.

(d) Rules and regulations; blind made products, priority

(1) The Committee may make rules and regulations regarding (A) specifications for commodities and services on the procurement list, (B) the time of their delivery, and (C) such other matters as may be necessary to carry out the purposes of sections 46 to 48c of this title.

(2) The Committee shall prescribe regulations providing that—

(A) in the purchase by the Government of commodities produced and offered for sale by qualified nonprofit agencies for the blind or such agencies for other severely handicapped, priority shall be accorded to commodities produced and offered for sale by qualified nonprofit agencies for the blind, and

(B) in the purchase by the Government of services offered by nonprofit agencies for the blind or such agencies for other severely handicapped, priority shall, until the end of the calendar year ending December 31, 1976, be accorded to services offered for sale by qualified nonprofit agencies for the blind.

(e) Problems and production methods; study and evaluation

The Committee shall make a continuing study and evaluation of its activities under sections 46 to 48c of this title for the purpose of assuring effective and efficient administration of sections 46 to 48c of this title. The Committee may study (on its own or in cooperation with other public or nonprofit private agencies) (1) problems related to the employment of the blind and of other severely handicapped individuals, and (2) the development and adaptation of production methods which would enable a greater utilization of the blind and other severely handicapped individuals.

(June 25, 1938, ch. 697, § 2, 52 Stat. 1196; June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 79.)

AMENDMENTS

1971—Pub. L. 92-28, in substituting subsecs. (a) to (e) for former paragraph, among other changes: extended the provisions to cover commodities and services of agencies for the blind and other severely handicapped, previously limited to brooms and mops and other suitable commodities manufactured by agencies for the blind; added provisions incorporated in subsecs. (a) and (e); incorporated in subsec. (b) provisions for determination of fair market price and price revisions; incorporated in subsec. (c) provisions for designation of a central nonprofit agency, providing for distribution by direct allocation, subcontract, or any other means; incorporated existing provisions in subsec. (d)(1), adding par. (2) thereof; and deleted provision that no change in prices shall become effective prior to expiration of fifteen days from date on which such change is made by the Committee.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-28 effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as an Effective Date of 1971 Amendment note under section 46 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 48a of this title.

§ 48. Procurement requirements for the Government; nonapplication to prison made prooducts

If any entity of the Government intends to procure any commodity or service on the procurement list, that entity shall, in accordance with rules and regulations of the Committee, procure such commodity or service, at the price established by the Committee, from a qualified nonprofit agency for the blind or such an agency for other severely handicapped if the commodity or service is available within the period required by that Government entity; except that this section shall not apply with respect to the procurement of any commodity which is available for procurement from an industry established under chapter 307 of title 18, and which, under section 4124 of such title 18, is required to be procured from such industry.

(June 25, 1938, ch. 697, § 3, 52 Stat. 1196; June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 80.)

AMENDMENTS

1971—Pub. L. 92-28 extended provisions to cover any commodity or service on the procurement list for former provision for brooms and mops and other suitable commodities, excepted the section from application to prison-made products, and deleted provision for nonapplicability of sections 46 to 58 of this title to cases where brooms and mops were available for procurement from and Federal department or agency and procurement therefrom was required under provisions of any law in effect on June 25, 1938, or to cases where brooms and mops were procured outside continental United States.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-28 effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as an Effective Date of 1971 Amendment note under section 46 of this title.

§ 48a. Audit

The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and other records of the Committee and of each agency designated by the Committee under section 47(c) of this title. This section shall also apply to any qualified nonprofit agency for the blind and any such agency for other severely handicapped which have sold commodities or services under sections 46 to 48c of this title but only with respect to the books, documents, papers, and other records of such agency which relate to its activities in a fiscal year in which a sale was made under sections 46 to 48c of this title.

(June 25, 1938, ch. 697, § 4, as added June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 81.)

EFFECTIVE DATE

Section effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as an Effective Date of 1971 Amendment note under section 46 of this title.

§ 48b. Definitions

For purposes of sections 46 to 48c of this title—

(1) The term "blind" refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(2) The terms "other severely handicapped" and "severely handicapped individuals" mean an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Government and taking into account the views of non-Government entities representing the handicapped) constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from currently engaging in normal competitive employment.

(3) The term "qualified nonprofit agency for the blind" means an agency—

(A) organized under the laws of the United States or of any State, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(B) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) which in the production of commodities and in the provision of services (whether or not the commodities or services are procured under sections 46 to 48c of this title) during the fiscal year employs blind individuals for not less than 75 per centum of the man-hours of direct labor required for the production or provision of the commodities or services.

(4) The term "qualified nonprofit agency for other severely handicapped" means an agency—

(A) organized under the laws of the United States or of any State, operated in the interest of severely handicapped individuals who are not blind, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(B) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) which in the production of commodities and in the provision of services (whether or not the commodities or services are procured under sections 46 to 48c of this title) during the fiscal year employs blind or other severely handicapped individuals for not less than 75 per centum of the man-hours of direct labor required for the production or provision of the commodities or services.

(5) The term "direct labor" includes all work required for preparation, processing, and packing of a commodity, or work directly relating to the performance of a service, but not supervision, administration, inspection, or shipping.

(6) The term "fiscal year" means the twelve-month period beginning on October 1 of each year.

(7) The terms "Government" and "entity of the Government" include any entity of the legislative branch or the judicial branch, any executive agency or military department (as such agency and department are respectively defined by sections 102 and 105 of title 5), the United States Postal Service, and any nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

(8) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(June 25, 1938, ch. 697, § 5, as added June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 81, and amended July 25, 1974, Pub. L. 93-358, § 1(3), 88 Stat. 393; Apr. 21, 1976, Pub. L. 94-273, § 3(22), 90 Stat. 377.)

AMENDMENTS

1976—Pub. L. 94-273 substituted "October" for "July" in par. (6).

1974—Pub. L. 93-358 added as par. (5) a new definition of the term "direct labor", struck out former par. (6) which had defined the term "direct labor" without reference to work directly relating to the performance of a service, and redesignated former pars. (7), (8), and (9) as (6), (7), and (8), respectively.

EFFECTIVE DATE

Section effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as an Effective Date of 1971 Amendment note under section 46 of this title.

§ 48c. Authorization of appropriations

There are authorized to be appropriated to the Committee to carry out sections 46 to 48c of this title $240,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary for the succeeding fiscal years.

(June 25, 1938, ch. 697, § 6, as added June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 82, and amended July 30, 1973, Pub. L. 93-76, 87 Stat. 176; July 25, 1974, Pub. L. 93-358, § 1(4), 88 Stat. 393.)

AMENDMENTS

1974—Pub. L. 93-358 substituted "$240,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary for the succeeding fiscal years" for $200,000 each for the fiscal year ending June 30, 1972, and the next succeeding fiscal year, and $240,000 for the fiscal year ending June 30, 1974".

1973—Pub. L. 93-76 increased the authorization of appropriation to $240,000 for the fiscal year ending June 30, 1974.

EFFECTIVE DATE

Section effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as an Effective Date of 1971 Amendment note under section 46 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 47, 48a, 48b of this title.

§ 49. Defense employment; honorable discharge from land and naval forces as equivalent to birth certificate

No defense contractor shall deny employment, on account of failure to produce a birth certificate, to any person who submits, in lieu of a birth certificate, an honorable discharge certificate or certificate issued in lieu thereof from the Army, Air Force, Navy, Marine Corps, or Coast Guard of the United States, unless such honorable discharge certificate shows on its face that such person may have been an alien at the time of its issuance.

(June 22, 1942, ch. 432, § 1, 56 Stat. 375.)

CHANGE OF NAME

Air Force was inserted under the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 502, 503. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947 were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces", which in sections 3010 to 3013 and 8010 to 8013 continued the Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of the Treasury, with certain exceptions, to the Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of the Coast Guard, and the Commandant of the Coast Guard, were excepted from transfer when the Coast Guard is operating as part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 50 of this title.

§ 50. "Defense contractor" defined

As used in sections 49 and 50 of this title the term "defense contractor" means an employer engaged in—

(1) the production, maintenance, or storage of arms, armament, ammunition, implements of war, munitions, machinery, tools, clothing, food, fuel, or any articles or supplies, or parts or ingredients of any articles or supplies; or

(2) the construction, reconstruction, repair, or installation of a building, plant, structure, or facility;

under a contract with the United States or under any contract which the President, the Secretary of the Army, the Secretary of the Air Force, the Secretary of the Navy, or the Federal Maritime Commission certifies to such employer to be necessary to the national defense.

(June 22, 1942, ch. 432, § 2, 56 Stat. 376; 1950 Reorg. Plan No. 21, §§ 101, 102, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273; 1961 Reorg. Plan No. 7, § 103, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 810.)

CHANGE OF NAME

The Secretary of the Air Force was inserted under the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947 were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces", which in sections 3010 to 3013 and 8010 to 8013 continued the Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Maritime Commission were transferred to the chairman of the Maritime Commission by Reorg. Plan No. 6 of 1949, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1069, set out in the Appendix to Title 5, Government Organization and Employees.

"Federal Maritime Board" was substituted for "Maritime Commission" (meaning the United States Maritime Commission) on the authority of Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, which abolished the United States Maritime Commission and transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the chairman of said Federal Maritime Board should, ex officio, be such Administrator.

"Federal Maritime Commission" was substituted for "Federal Maritime Board" in view of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, which established the Federal Maritime Commission and abolished the Federal Maritime Board, including the offices of the members thereof, and which transferred functions of the Federal Maritime Board either to the Federal Maritime Commission or to the Secretary of Commerce.

§ 51. Fees or kick-backs by subcontractors on negotiated contracts; recovery by United States; conclusive presumptions; withholding of payments

The payment of any fee, commission, or compensation of any kind or the granting of any gift or gratuity of any kind, either directly or indirectly, by or on behalf of a subcontractor, as defined in section 52 of this title, (1) to any officer, partner, employee, or agent of a prime contractor holding a negotiated contract entered into by any department, agency, or establishment of the United States for the furnishing of supplies, materials, equipment or services of any kind whatsoever; or to any such prime contractor or (2) to any officer, partner, employee, or agent of a higher tier subcontractor holding a subcontract under the prime contract, or to any such subcontractor either as an inducement for the award of a subcontract or order from the prime contractor or any subcontractor, or as an acknowledgment of a subcontract or order previously awarded, is prohibited. The amount of any such fee, commission, or compensation or the cost or expense of any such gratuity or gift, whether heretofore or hereafter paid or incurred by the subcontractor, shall not be charged, either directly or indi-

rectly, as a part of the contract price charged by the subcontractor to the prime contractor or higher tier subcontractor. The amount of any such fee, cost, or expense shall be recoverable on behalf of the United States from the subcontractor or the recipient thereof by setoff of moneys otherwise going to the subcontractor either directly by the United States, or by a prime contractor under any contract or by an action in an appropriate court of the United States. Upon a showing that a subcontractor paid fees, commissions, or compensation or granted gifts or gratuities to an officer, partner, employee, or agent of a prime contractor or of another higher tier subcontractor, in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the cost of such expense was included in the price of the subcontract or order and ultimately borne by the United States. Upon the direction of the contracting department or agency or of the General Accounting Office, the prime contractor shall withhold from sums otherwise due a subcontractor any amount reported to have been found to have been paid by a subcontractor as a fee, commission, or compensation or as a gift or gratuity to an officer, partner, employee, or agent of the prime contractor or another higher tier subcontractor.

(Mar. 8, 1946, ch. 80, § 1, 60 Stat. 37; Sept. 2, 1960, Pub. L. 86-695, 74 Stat. 740.)

AMENDMENTS

1960—Pub. L. 86-695 inserted "negotiated" preceding "contract" and deleted ", on a cost-plus-a-fixed-fee or other cost reimbursable basis" following "whatsoever" in clause (1), and substituted "setoff" for "set-off" and "contract" for "cost-plus-a-fixed-fee or cost reimbursable contract," preceding "or by an action".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 52 of this title.

§ 52. Definitions

For the purpose of sections 51 to 54 of this title, the term "subcontractor" is defined as any person, including a corporation, partnership, or business association of any kind, who holds an agreement or purchase order to perform all or any part of the work or to make or to furnish any article or service required for the performance of a negotiated contract or of a subcontract entered into thereunder; the term "person" shall include any subcontractor, corporation, association, trust, joint-stock company, partnership, or individual; and the term "negotiated contract" means made without formal advertising.

(Mar. 8, 1946, ch. 80, § 2, 60 Stat. 38; Sept. 2, 1960, Pub. L. 86-695, 74 Stat. 740.)

AMENDMENTS

1960—Pub. L. 86-695 substituted "negotiated contract" for "cost-plus-a-fixed-fee or cost reimbursable contract" in the definition of "subcontractor" and defined the term "negotiated contract".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 51 of this title.

§ 53. Power of General Accounting Office as to fees and kick-backs

For the purpose of ascertaining whether such fees, commissions, compensation, gifts, or gratuities have been paid or granted by a subcontractor, the General Accounting Office shall have the power to inspect the plants and to audit the books and records of any prime contractor or subcontractor engaged in the performance of a negotiated contract.

(Mar. 8, 1946, ch. 80, § 3, 60 Stat. 38; Sept. 2, 1960, Pub. L. 86-695, 74 Stat. 741.)

AMENDMENTS

1960—Pub. L. 86-695 substituted "negotiated contract" for "cost-plus-a-fixed-fee or cost reimbursable contract".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 52 of this title.

§ 54. Penalties as to fees and kick-backs

Any person who shall knowingly, directly or indirectly, make or receive any such prohibited payment shall be fined not more than $10,000 or be imprisoned for not more than two years, or both.

(Mar. 8, 1946, ch. 80, § 4, 60 Stat. 38; Sept. 2, 1960, Pub. L. 86-695, 74 Stat. 741.)

AMENDMENTS

1960—Pub. L. 86-695 reenacted section without change.

CROSS REFERENCES

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 52 of this title.

CHAPTER 2—TERMINATION OF WAR CONTRACTS

Sec.

101. Declaration of policy.
102. Surveillance by Congress.
103. Definitions.
104. Administration of chapter.
(a) Repealed.
(b) Rules and regulations.
(c) Compliance.
(d) Personnel; supplies, facilities and services.
(e) Publication in Federal Register.
105. Contract Settlement Advisory Board; composition; duties.
106. Basis for settlement of termination claims.
(a) Priority to private contractors.
(b) Establishment of methods and standards.
(c) Conclusiveness of settlement.
(d) Allowable costs.
(e) Settlement by agreement.
(f) Interest.
(g) Amendment of contracts.
107. Settlement of subcontractors' claims.
(a) Conclusiveness of settlement.
(b) Supervision of payments to war contractors.
(c) Group settlements.
(d) Direct settlement by contracting agency.
(e) Amount of settlement.
(f) Equitable payments.
108. Interim financing.
(a) Prime contractors.

Sec.
(b) Method of financing; amounts payable.
(c) Evidence to support financing.
(d) Penalty for overstatement of claims.
(e) Advance payments as part of termination settlement.
(f) Liquidation of loans, etc., prior to final settlement.
(g) Settlement of claims; validation of prior financing.
109. Advance or partial payments to subcontractors; excessive payments, interest, liability of war contractor.
110. Guarantee of loans, advances, etc.
(a) By contract.
(b) By assignment.
(c) Federal Reserve bank as fiscal agent.
(d) Application of other laws.
111. Termination of contracts.
(a) Advance notice; prime contracts.
(b) Cessation of work without termination.
(c) Authority of Administrator of General Services; classes of contracts.
112. Removal and storage of materials.
(a) Termination inventory.
(b) Statement on material of inventory.
(c) Removal and storage by Government agency.
(d) Removal and storage by war contractor.
(e) Acquisition by Government agency of inventory material; liability.
(f) Postponement or delay of termination settlement.
(g) Government-owned machinery.
(h) Limitation on Government acquisition of inventories.
(i) Removal and storage by war contractor at own risk.
113. Appeals.
(a) Failure to settle claims by agreement; preparation of findings; notice to war contractor.
(b) Rights of war contractor.
(c) Procedure.
(d) Omitted.
(e) Arbitration.
(f) Conclusiveness of decisions.
114. Court of Claims.
(a) Appointment of auditors.
(b) Procedure.
(c) Jurisdiction.
115. Personal financial liability of contracting officers.
116. Functions of General Accounting Office.
(a) Review of terminated settlements; limitations.
(b) Certification of fraudulent settlements to Department of Justice.
(c) Reports to Congress.
(d) Jurisdiction of Comptroller General.
117. Defective, informal, and quasi contracts.
(a) Lack of formalized contract.
(b) Technical defects or omissions.
(c) Failure to settle.
(d) Formalization of obligations; termination date for filing claims.
118. Administration.
(a) Records and forms.
(b) Repealed.
(c) Advance notice on cut-backs.
(d) Investigations.
(e) Certification of fraudulent settlements to Department of Justice.
119. Fraudulent claims, vouchers, statements, etc.; jurisdiction.
Sec.
120. Powers and duties of contracting agencies.
(a) Limitation.
(b) Evidence required; conclusiveness of determinations.
(c) Appropriations.
(d) Validation of prior settlements.
(e) Impairment of contract.
(f) Aid to war contractors.
121. Administrator of General Services; additional duties.
122. Use of appropriated funds.
123. Delegation of authority by Administrator of General Services.
(a) Officers and agencies of General Services Administration and other governmental agencies.
(b) Authority delegated to other governmental agencies.
(c) Joint exercise of delegated authority.
(d) Application to other laws.
124. Effective date; applicability to lend lease contracts.
125. Exemption of certain contracts outside continental United States or in Alaska.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 sections 551, 701.

§ 101. Declaration of policy

The Congress declares that the objectives of this chapter are—

(a) to facilitate maximum war production during the war, and to expedite reconversion from war production to civilian production as war conditions permit;

(b) to assure to prime contractors and subcontractors, small and large, speedy and equitable final settlement of claims under terminated war contracts, and adequate interim financing until such final settlement;

(c) to assure uniformity among Government agencies in basic policies and administration with respect to such termination settlements and interim financing;

(d) to facilitate the efficient use of materials, manpower, and facilities for war and civilian purposes by providing prime contractors and subcontractors with notice of termination of their war contracts as far in advance of the cessation of work thereunder as is feasible and consistent with the national security;

(e) to assure the expeditious removal from the plants of prime contractors and subcontractors of termination inventory not to be retained or sold by the contractor;

(f) to use all practicable methods compatible with the foregoing objectives to prevent improper payments and to detect and prosecute fraud.

(July 1, 1944, ch. 358, § 1, 58 Stat. 649.)

SHORT TITLE

Congress in enacting this chapter provided by section 27 of act July 1, 1944, that it should be known as the "Contract Settlement Act of 1944".

SEPARABILITY OF PROVISIONS

Section 26 of act July 1, 1944, provided: "If any provision of this Act [this chapter], or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act [this chapter] or the application of such provision to persons or circum-

stances other than those as to which it is held invalid, shall not be affected thereby."

CROSS REFERENCES

Disposal of surplus property, see sections 484 and 511 to 514 of Title 40, Public Buildings, Property, and Works.

Renegotiation Act, see section 1191 of Title 50, App., War and National Defense.

Renegotiation Act of 1948, see section 1193 of Title 50, App.

Renegotiation Act of 1951, see section 1211 et seq. of Title 50, App.

Settlement of claims for losses on certain war contracts, see note under section 106 of this title.

§ 102. Surveillance by Congress

(a) To assist the Congress in appraising the administration of this chapter and in developing such amendments or related legislation as may further be necessary to accomplish the objectives of this chapter, the appropriate committees of the Senate and the House of Representatives shall study each report submitted to the Congress under this chapter and shall otherwise maintain continuous surveillance of the operations of the Government agencies under this chapter.

(b) Repealed. Oct. 31, 1951, ch. 654, § 1(110), 65 Stat. 705.

(July 1, 1944, ch. 358, § 2, 58 Stat. 649; Oct. 31, 1951, ch. 654, § 1(110), 65 Stat. 705.)

AMENDMENTS

1951—Subsec. (b), which related to reports to Congress, was repealed by act Oct. 31, 1951.

CROSS REFERENCES

Reports to Congress by Administrator of General Services, in connection with procurement, contracts, property management, etc., see section 492 of Title 40, Public Buildings, Property, and Works.

§ 103. Definitions

As used in this chapter—

(a) The term "prime contract" means any contract, agreement, or purchase order heretofore or hereafter entered into by a contracting agency and connected with or related to the prosecution of the war; and the term "prime contractor" means any holder of one or more prime contracts.

(b) The term "subcontract" means any contract, agreement, or purchase order heretofore or hereafter entered into to perform any work, or to make or furnish any material to the extent that such work or material is required for the performance of any one or more prime contracts or of any one or more other subcontracts; and the term "subcontractor" means any holder of one or more subcontracts.

(c) The term "war contract" means a prime contract or a subcontract; and the term "war contractor" means any holder of one or more war contracts.

(d) The terms "termination", "terminate" and "terminated" refer to the termination or cancellation, in whole or in part, of work under a prime contract for the convenience or at the option of the Government (except for default of the prime contractor) or of work under a subcontract for any reason except the default of the subcontractor.

(e) The term "material" includes any article, commodity, machinery, equipment, accessory, part, component, assembly, work in process, maintenance, repair, and operating supplies, and any product of any kind.

(f) The term "Government agency" means any executive department of the Government, or any administrative unit or subdivision thereof, any independent agency or any corporation owned or controlled by the United States in the executive branch of the Government, and includes any contracting agency.

(g) The term "contracting agency" means any Government agency, which has been or hereafter may be authorized to make contracts pursuant to section 611 of Appendix to title 50, and includes the Reconstruction Finance Corporation and any corporation organized pursuant to the Reconstruction Finance Corporation Act, and the Secretary of Commerce.

(h) The term "termination claim" means any claim or demand by a war contractor for fair compensation for the termination of any war contract and any other claim under a terminated war contract, which regulations prescribed under this chapter authorize to be asserted and settled in connection with any termination settlement.

(i) The term "interim financing" includes advance payments, partial payments, loans, discounts, advances, and commitments in connection therewith, and guaranties of loans, discounts, advances, and commitments in connection therewith and any other type of financing made in contemplation of or related to termination of war contracts.

(j) The term "Administrator" means the Administrator of General Services.

(k) The term "person" means any individual, corporation, partnership, firm, association, trust, estate, or other entity.

(l) The term "termination inventory" means any materials (including a proper part of any common materials), properly allocable to the terminated portion of a war contract, except any machinery or equipment subject to a separate contract specifically governing the use or disposition thereof.

(m) The term "final and conclusive", as applied to any settlement, finding, or decision, means that such settlement, finding, or decision shall not be reopened, annulled, modified, set aside, or disregarded by any officer, employee, or agent of the United States or in any suit, action, or proceeding except as provided in this chapter.

(July 1, 1944, ch. 358, § 3, 58 Stat. 650; Ex. Ord. No. 9638, § 1, eff. Oct. 4, 1945, 10 F.R. 12591; Ex. Ord. No. 9809, §§ 1, 8 eff. Dec. 12, 1946, 11 F.R. 14281; Ex. Ord. No. 9841, §§ 101, 203, eff. Apr. 23, 1947, 12 F.R. 2645; June 30, 1947, ch. 166, title II, § 207, 61 Stat. 209; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

REFERENCES IN TEXT

Section 611 of Appendix to title 50, referred to in subsec. (g), was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 651. See now section 1431 et seq. of Title 50, War and National Defense.

The Reconstruction Finance Corporation Act, referred to in subsec. (g), is act Jan. 22, 1932, ch. 8, 47

Stat. 5, as amended, which was formerly classified to chapter 14 (§ 601 et seq.) of Title 15, Commerce and Trade, and which has now been eliminated from the Code. For complete classification of this Act to the Code prior to its elimination from the Code, see Tables volume.

CODIFICATION

The Smaller War Plants Corporation was omitted from the definition of the term "contracting agency," in subsec. (g) on the authority of section 207 of Act June 30, 1947, which provided: "The liquidation of the affairs of the Smaller War Plants Corporation administered by the Reconstruction Finance Corporation pursuant to Executive Order 9665 shall be carried out by the Reconstruction Finance Corporation, notwithstanding the provisions of the last paragraph of section 5 of the First War Powers Act, 1941 [section 605 of Title 50, Appendix, War and National Defense]. The Smaller War Plants Corporation is hereby abolished."

TRANSFER OF FUNCTIONS

In subsec. (j), the functions of the Director of Contract Settlement transferred to the Secretary of the Treasury by Ex. Ord. No. 9809, § 8, and Reorg. Plan No. 1 of 1947, § 201, were retransferred to the Administrator of General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

In subsec. (g), "Secretary of Commerce" was substituted for "War Production Board" in view of transfer of War Production Board functions to the Civilian Production Administration, then to the Office of Temporary Controls, and then to the Secretary of Commerce by Ex. Ord. Nos. 9638, 9809, and 9841.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Reorg. Plan No. 1 of 1957, § 6(a), eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Reconstruction Finance Corporation.

CROSS REFERENCES

War contracts penal provision comprehending the definitions of terms used in this section, see section 443 of Title 18, Crimes and Criminal Procedure.

War-time suspension of limitations, applicability of definitions, see section 3287 of Title 18.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 sections 443, 3287.

§ 104. Administration of chapter

(a) Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 652

(b) Rules and regulations

In order to insure uniform and efficient administration of the provisions of this chapter, the Administrator of General Services, subject to such provisions, by general orders or general regulations—

(1) shall prescribe policies, principles, methods, procedures, and standards to govern the exercise of the authority and discretion and the performance of the duties and functions of all Government agencies under this chapter; and

(2) may require or restrict the exercise of any such authority and discretion, or the performance of any such duty or function, to such extent as he deems necessary to carry out the provisions of this chapter.

(c) Compliance

The exercise of any authority or discretion and the performance of any duty or function, conferred or imposed on any Government agency by this chapter, shall be subject to such orders and regulations prescribed by the Administrator of General Services pursuant to subsection (b) of this section. Each Government agency shall carry out such orders and regulations of the Administrator of General Services expeditiously, and shall issue such regulations with respect to its operations and procedures as may be necessary to carry out the policies, principles, methods, procedures, and standards prescribed by the Administrator of General Services. Any Government agency may issue such further regulations not inconsistent with the general orders or regulations of the Administrator of General Services as it deems necessary or desirable to carry out the provisions of this chapter.

(d) Personnel; supplies, facilities and services

The Administrator of General Services may, within the limits of funds which may be made available, employ and fix the compensation of necessary personnel in accordance with the provisions of the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5, and make expenditures for supplies, facilities, and services necessary for the performance of his functions under this chapter. Without regard to the provisions of the civil-service laws, he may employ certified public accountants, qualified cost accountants, industrial engineers, appraisers, and other experts, and contract with certified public accounting firms and qualified firms of engineers in the discharge of the duties imposed upon him and in furtherance of the objectives and policies of this chapter. The Administrator of General Services shall perform the duties imposed upon him through the personnel and facilities of the contracting agencies and other established Government agencies, to the extent that this does not interfere with the function of the Administrator of General Services to insure uniform and efficient administration of the provisions of this chapter.

(e) Publication in Federal Register

All orders and regulations prescribed by the Administrator of General Services or any Government agency under this chapter shall be published in the Federal Register.

(July 1, 1944, ch. 358, § 4, 58 Stat. 651; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 652.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsec. (d), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

CODIFICATION

In subsec. (d), "chapter 51 and subchapter III of chapter 53" was substituted for "the Classification Act of 1949" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

In the second sentence, provisions that authorized the appointment of a Deputy Director and that authorized the employment of certified public accountants, qualified cost accountants, industrial engineers, appraisers, and other experts without regard to "the Classification Act of 1923", were omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While section 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exceptions contained in this sentence because of section 1106(b) which provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by section 1106(a). The Classification Act of 1949 was repealed by Pub. L. 89-554, Sept. 6, 1966, § 8(a), 80 Stat. 632 (of which section 1 revised and enacted Title 5, Government Organization and Employees, into law). Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-554 repealed subsec. (a), which provided for the appointment, pay, and term of the Director of Contract Settlement. This office was abolished previously by Reorg. Plan No. 1 of 1947.

1949—Subsec. (d). Act Oct. 28, 1949, substituted reference to the "Classification Act of 1949" for the "Classification Act of 1923"

REPEALS

Act Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

Subsec. (a), establishing the Office of Contract Settlement to be headed by the Director of Contract Settlement and providing for the appointment of the Director by the President with the advice and consent of the Senate with compensation of $12,000 per year and a term of two years, was repealed, and references in the remainder of this section to "Director" were changed to "Secretary" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

CROSS REFERENCES

Additional duties of Administrator and delegation of authority by him, see sections 121 and 123 of this title.

§ 105. Contract Settlement Advisory Board; composition; duties

There is created a Contract Settlement Advisory Board, with which the Administrator of General Services shall advise and consult. The Board shall be composed of the Administrator of General Services who shall act as its Chairman, and of the Secretary of the Army, the Secretary of the Navy, the Chairman of the Maritime Commission, the Secretary of State, the chairman of the board of directors of the Reconstruction Finance Corporation, Secretary of Commerce, and the Attorney General or any alternate or representative designated by any of them. The Administrator of General Services shall request other Government agencies to participate in the deliberations of the Board whenever matters specially affecting them are under consideration.

(July 1, 1944, ch. 358, § 5, 58 Stat. 651; Ex. Ord. No. 9630, § 1, eff. Sept. 27, 1945, 10 F.R. 12245; Ex. Ord. No. 9638, § 1, eff. Oct. 4, 1945, 10 F.R. 12591; Ex. Ord. No. 9665, § 2, eff. Dec. 27, 1945, 10 F.R. 15365; Ex. Ord. No. 9730, § 1, eff. May 27, 1946, 11 F.R. 5777; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; Ex. Ord. No. 9841, §§ 101, 203, eff. Apr. 23, 1947, 12 F.R. 2645; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

CHANGE OF NAME

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued the Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

The Contract Settlement Advisory Board and all its property, records, etc., were transferred to the General Services Administration by section 102(b) of act June 20, 1949, but was to retain and perform its functions. See section 752(b) of Title 40, Public Buildings, Property, and Works.

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40.

The Contract Settlement Advisory Board was transferred to the Department of the Treasury by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

In text of this section, references to "Director" were changed to "Secretary of the Treasury" and phrase "the Secretary of the Treasury" following reference to Secretary of the Navy was omitted by section 8 of Ex. Ord. No. 9809, and section 201 of Reorg. Plan No. 1 of 1947.

The Administrator of the Foreign Economic Administration was changed to Secretary of State in view of Ex. Ord. No. 9630, as amended by Ex. Ord. No. 9730.

"Secretary of Commerce" was substituted for references to the Chairman of the War Production Board and the chairman and board of directors of the Smaller War Plants Corporation. War Production Board functions were transferred to the Civilian Production Administration, to the Office of Temporary Controls and then to the Secretary of Commerce by Ex. Ord. Nos. 9638, 9809, and 9481, respectively. Functions of the chairman and Board of Directors of the Smaller War Plants Corporation were transferred to the Secretary of Commerce by Ex. Ord. No. 9665.

The "Maritime Commission" (meaning the United States Maritime Commission) was abolished by Reorg. Plan No. 21 of 1950, §§ 101, 102, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the chairman of said Federal Maritime Board should, ex officio, be such Administrator.

Reorg. Plan No. 7 of 1961, §§ 103, 304, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, established the Federal Maritime Commission and abolished the Federal Maritime Board, including the offices of the members thereof, and transferred functions of the Federal Maritime Board either to the Federal Maritime Commission or to the Secretary of Commerce.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, as effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

TERMINATION OF ADVISORY BOARDS

Advisory Boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law, see sections 3(2), and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECRETARY OF THE AIR FORCE

For transfer of certain procurement and related functions and property, insofar as they pertain to the Air Force, from the Secretary of the Army and Department of the Army, to the Secretary of the Air Force and Department of the Air Force, see Secretary of Defense Transfer Order No. 6, eff. Jan. 15, 1948.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Reorg. Plan No. 1 of 1957, § 6(a), eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Reconstruction Finance Corporation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 section 752.

§ 106. Basis for settlement of termination claims

(a) Priority to private contractors

It is the policy of the Government, and it shall be the responsibility of the contracting agencies and the Administrator of General Services to provide war contractors with speedy and fair compensation for the termination of any war contract, in accordance with and subject to the provisions of this chapter, giving priority to contractors whose facilities are privately owned or privately operated. Such fair compensation for the termination of subcontracts shall be based on the same principles as compensation for the termination of prime contracts.

(b) Establishment of methods and standards

Each contracting agency shall establish methods and standards, suitable to the conditions of various war contractors, for determining fair compensation for the termination of war contracts on the basis of actual, standard, average, or estimated costs, or of a percentage of the contract price based on the estimated percentage of completion of work under the terminated contract, or on any other equitable basis, as it deems appropriate. To the extent that such methods and standards require accounting, they shall be adapted, so far as practicable, to the accounting systems used by war contractors, if consistent with recognized commercial accounting practice.

(c) Conclusiveness of settlement

Any contracting agency may settle all or any part of any termination claim under any war contract by agreement with the war contractor, or by determination of the amount due on the claim or part thereof without such agreement, or by any combination of these methods. Where any such settlement is made by agreement, the settlement shall be final and conclusive, except (1) to the extent otherwise agreed in the settlement; (2) for fraud; (3) upon renegotiation to eliminate excessive profits under section 1191 of Appendix to title 50, unless exempt or exempted under such section; or (4) by mutual agreement before or after payment. Where any such settlement is made by determination without agreement, it shall likewise be final and conclusive, subject to the same exceptions as if made by agreement, unless the war contractor appeals or brings suit in accordance with section 113 of this title: *Provided*, That no settlement agreement hereunder involving payment to a war contractor of an amount in excess of $50,000 (or such lesser amount as the Administrator of General Services may from time to time determine) shall become binding upon the Government until the agreement has been reviewed and approved by a settlement review board of three or more members established by the contracting agency in the bureau, division, regional or district office, or other unit of the contracting agency authorized to make such settlement, or in the event of disapproval by the settlement review board, unless approved by the head of such bureau, division, regional or district office, or other unit. Failure of the settlement review board to act upon any settlement within thirty days after its submission to the board shall operate as approval by the board. The sole function of settlement review boards shall be to determine the over-all reasonableness of proposed settlement agreements from the point of view of protecting the interests of the Government. In determining, for purposes of this subsection, whether review of any settlement agreement is required because of the amounts involved, no deduction shall be made on account of credits for property chargeable to the Government or for advance or partial payments, but amounts payable under such settlement agreement for completed articles or work at the contract price and

for the discharge of the termination claims of subcontractors shall be deducted.

(d) Allowable costs

Except as hereinafter provided, the methods and standards established under subsection (b) of this section for determining fair compensation for termination claims which are not settled by agreement shall be designed to compensate the war contractor fairly for the termination of the war contract, taking into account—

(1) the direct and indirect manufacturing, selling and distribution, administrative and other costs and expenses incurred by the war contractor which are reasonably necessary for the performance of the war contract and properly allocable to the terminated portion thereof under recognized commercial accounting practices; and

(2) reasonable costs and expenses of settling termination claims of subcontractors related to the terminated portion of the war contract; and

(3) reasonable accounting, legal, clerical, and other costs and expenses incident to termination and settlement of the terminated war contract; and

(4) reasonable costs and expenses of removing, preserving, storing and disposing of termination inventories; and

(5) such allowance for profit on the preparations made and work done for the terminated portion of the war contract as is reasonable under the circumstances; and

(6) interest on the termination claim in accordance with subsection (f) of this section; and

(7) the contract price and all amounts otherwise paid or payable under the contract.

The following shall not be included as elements of cost:

(i) Losses on other contracts, or from sales or exchanges of capital assets, fees and other expenses in connection with reorganization or recapitalization, antitrust or Federal income-tax litigation, or prosecution of Federal income-tax claims or other claims against the Government (except as provided in paragraph (3) of this subsection); losses on investments; provisions for contingencies; and premiums on life insurance where the contractor is the beneficiary.

(ii) The expense of conversion of the contractor's facilities to uses other than the performance of the contract.

(iii) Expenses due to the negligence or willful failure of the contractor to discontinue with reasonable promptness the incurring of expenses after the effective date of the termination notice.

(iv) Costs incurred in respect to facilities, materials, or services purchased or work done in excess of the reasonable quantitative requirements of the entire contract.

The failure specifically to mention in this subsection any item of cost is not intended to imply that it should be allowed or disallowed. The Administrator of General Services may interpret the provisions of this subsection and may provide for the inclusion or exclusion of other costs in accordance with recognized commercial accounting practice.

Where the small size of claims or the nature of production or performance or other factors make it impracticable to apply the principles stated in this subsection to any class of settlements which are subject to this subsection, the contracting agencies may establish alternative methods and standards for determining fair compensation for that class of termination claims. The aggregate amount of compensation allowed in accordance with this subsection (excluding amounts allowed under paragraphs (3) and (4) of this subsection) shall not exceed the total contract price reduced by the amount of payments otherwise made or to be made under the contract.

(e) Settlement by agreement

In order to carry out the objectives of this chapter, termination claims shall be settled by agreement to the maximum extent feasible and the methods and standards established under subsection (b) of this section shall be designed to facilitate such settlements. To the extent that he deems it practicable to do so without impeding expeditious settlements, the Administrator of General Services shall require the contracting agencies to take into account the factors enumerated in subsection (d) of this section in establishing methods and standards for determining fair compensation in the settlement of termination claims by agreement.

(f) Interest

Each contracting agency shall allow and pay interest on the amount due and unpaid from time to time on any termination claim under a prime contract at the rate of 2½ per centum per annum for the period beginning thirty days after the date fixed for termination and ending with the date of final payment, except that (1) if the prime contractor unreasonably delays the settlement of his claim, interest shall not accrue for the period of such delay, (2) if interest for the period after termination on any advance payment or loan, made or guaranteed by the Government, has been waived for the benefit of the contractor, the amount of the interest so waived allocable to the terminated contract or the terminated part of the contract shall be deducted from the interest otherwise payable hereunder, and (3) if after delivery of findings by a contracting agency, the contractor appeals or sues as provided in section 113 of this title, interest shall not accrue after the thirtieth day following the delivery of the findings on any amount allowed by such findings, unless such amount is increased upon such appeal or suit. In approving, ratifying, authorizing, or making termination settlements with subcontractors, each contracting agency shall allow interest on the termination claim of the subcontractor on the same basis and subject to the same conditions as are applicable to a prime contractor.

(g) Amendment of contracts

Where any war contract does not provide for or provides against such fair compensation for its termination, the contracting agency, either before or after its termination, shall amend such war contract by agreement with the war contractor, or shall authorize, approve, or ratify an amendment of such war contract by the parties thereto, to provide for such fair compensation.

(July 1, 1944, ch. 358, § 6, 58 Stat. 652; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

APPLICATION TO TERMINATED WAR CONTRACTS

For application of this section to war contracts terminated at or before July 21, 1944, see section 124(a) of this title.

SETTLEMENT OF CLAIMS FOR WAR CONTRACT LOSSES INCURRED BETWEEN SEPTEMBER 16, 1940, AND AUGUST 14, 1945

Act Aug. 7, 1946, ch. 864, §§ 1-6, 60 Stat. 902, as amended by June 25, 1948, ch. 646, § 37, 62 Stat. 992; Aug. 30, 1954, ch. 1076, § 1(2), 68 Stat. 966, provided that if work, supplies, or services were provided for any department or agency of the Government, under a contract or subcontract, between Sept. 16, 1940 and Aug. 14, 1945, and a loss was incurred by the contractors or subcontractors without fault or negligence on their part, then those departments or agencies were authorized to adjust and settle these losses on a fair and equitable basis, if claims were filed within six months after Aug. 7, 1946, and granted claimants dissatisfied with the settlement the right of judicial review.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 107, 113, 124 of this title.

§ 107. Settlement of subcontractors' claims

(a) Conclusiveness of settlement

Where, in connection with the settlement of any termination claim by a contracting agency, any war contractor makes settlements of the termination claims of his subcontractors, the contracting agency shall limit or omit its review of such settlements with subcontractors to the maximum extent compatible with the public interest. Any contracting agency (1) may approve, ratify, or authorize such settlements with subcontractors upon such evidence, terms, and conditions as it deems proper; (2) shall vary the scope and intensity of its review of such settlements according to the reliability of the war contractor, the size, number, and complexity of such claims, and other relevant factors; and (3) shall authorize war contractors to make such settlements with subcontractors without review by the contracting agency, whenever the reliability of the war contractor, the amount or nature of the claims, or other reasons appear to the contracting agency to justify such action. Any such settlement of a subcontract approved, ratified, or authorized by a contracting agency shall be final and conclusive as to the amount due to the same extent as a settlement under subsection (c) of section 106 of this title, and no war contractor shall be liable to the United States on account of any amounts paid thereon except for his own fraud.

(b) Supervision of payments to war contractors

Whenever any contracting agency is satisfied of the inability of a war contractor to meet his obligations it shall exercise supervision or control over payments to the war contractor on account of termination claims of subcontractors of such war contractor to such extent and in such manner as it deems necessary or desirable for the purpose of assuring the receipt of the benefit of such payments by the subcontractors.

(c) Group settlements

The Administrator of General Services shall prescribe policies and methods for the settlement as a group, or otherwise, by any contracting agency of some or all of the termination claims of a war contractor under war contracts with one or more (1) bureaus or divisions within a contracting agency, (2) contracting agencies, or (3) prime contractors and subcontractors, to the extent he deems such action necessary or desirable for expeditious and equitable settlement of such claims. After consulting with the contracting agencies concerned, the Administrator of General Services may provide for assigning any war contractor to a contracting agency for such settlement, and such agency shall have authority to settle, on behalf of any other contracting agency, some or all of the termination claims of such war contractor.

(d) Direct settlement by contracting agency

Any contracting agency may settle directly termination claims of subcontractors to the extent that it deems such action necessary or desirable for the expeditious and equitable settlement of such claims. In making such termination settlements any contracting agency may discharge the claim of the subcontractor by payment or may purchase such claim, and may agree to assume, or indemnify the subcontractor against, any claims by any person in connection with such claim or the termination settlement. Any contracting agency undertaking to settle the termination claim of any subcontractor shall deliver to the subcontractor and the war contractor liable to him written notice stating its acceptance of responsibility for settling his claim and the conditions applicable thereto, which may include the release, or assignment to the contracting agency, of his claim against the war contractor liable to him; upon consent thereto by the subcontractor, the Government shall become liable for the settlement of his claims upon the conditions specified in the notice.

(e) Amount of settlement

Any contracting agency may make settlements with subcontractors in accordance with any of the provisions of this chapter without regard to any limitation on the amount payable by the Government to the prime contractor.

(f) Equitable payments

If any contracting agency determines that in the circumstances of a particular case equity

and good conscience require fair compensation for the termination of a war contract to be paid to a subcontractor who has been deprived of and cannot otherwise reasonably secure such fair compensation, the contracting agency concerned may pay such compensation to him although such compensation already has been included and paid as part of a settlement with another war contractor.

(July 1, 1944, ch. 358, § 7, 58 Stat. 654; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

APPLICATION TO TERMINATED WAR CONTRACTS

For application of this section to war contracts terminated at or before July 21, 1944, see section 124(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 124 of this title.

§ 108. Interim financing

(a) Prime contractors

It is the policy of the Government, and it shall be the responsibility of the contracting agencies and the Administrator of General Services, in accordance with and subject to the provisions of this chapter, to provide war contractors having any termination claim or claims, pending their settlement, with adequate interim financing, within thirty days after proper application therefor.

(b) Method of financing; amounts payable

Each contracting agency shall, to the greatest extent it deems practicable, make available interim financing through loans and discounts, and commitments and guaranties in connection therewith, in contemplation of or related to termination of war contracts. Where interim financing is made by advance payments or partial payments, it shall, insofar as practicable, consist of the following:

(1) An amount equal to 100 per centum of the amount payable, at the contract price, on account of acceptable items completed prior to the termination date under the terms of the contract, or completed thereafter with the approval of the contracting agency; plus

(2) An amount equal to 90 per centum of the cost of raw materials, purchased parts, supplies, direct labor, and manufacturing overhead allocable to the terminated portion of the war contract; plus

(3) A reasonable percentage of other allowable costs, including administrative overhead, allocable to the terminated portion of the war contract not included in the foregoing; plus

(4) Such additional amounts, if any, as the contracting agency deems necessary to provide the war contractor with adequate interim financing.

(5) In lieu of the costs referred to in clauses (2) and (3) of this subsection, where a detailed ascertainment of such costs is not suitable to the conditions of any war contractor and is apt to cause delay in the obtaining of interim financing by him, that portion of such interim financing shall be equal to an amount not greater than 90 per centum of the estimated costs which are allocable to the terminated part or parts of the war contract or group of war contracts, and are ascertained in accordance with such methods and standards as the Administrator of General Services shall prescribe.

(6) There shall be deducted from the amount of such interim financing any unliquidated balances of advance and partial payments theretofore made to such war contractor, which are allocable to the terminated war contract or the terminated part of the war contract.

(c) Evidence to support financing

The Administrator of General Services shall prescribe (1) the types of estimates, certificates, or other evidence to be required to support such interim financing; (2) the terms and conditions upon which such interim financing shall be made including the use of standard forms for agreements with respect to such interim financing to the extent practicable; (3) the classes of cases in which such interim financing shall be refused; and (4) such methods of supervision and control over such interim financing as he deems necessary or desirable to assure adequate and speedy interim financing to subcontractors of the war contractor.

(d) Penalty for overstatement of claims

In case of an overstatement by any war contractor of the amount due on his termination claim or claims in connection with any interim financing under this chapter, such contractor shall pay to the United States, as a penalty, an amount equal to 6 per centum of the amount of the overstatement, but the Administrator of General Services may suspend or modify any such penalty if in his opinion the imposition thereof would be inequitable. Any penalty may be deducted from any amounts due the war contractor upon such termination claim or claims, or otherwise, or may be collected from the war contractor by suit. The obligation to pay any penalty imposed and to repay any interim financing made or assumed by the United States under this chapter shall constitute a debt due to the United States within the meaning of section 191 of title 31.

(e) Advance payments as part of termination settlement

Any contracting agency may allow any advance payments, previously made or authorized by it in connection with the performance of a war contract, to be used for payments and expenses related to the termination settlement of

such contract, upon such terms and conditions as it deems necessary or appropriate to protect the interest of the Government.

(f) Liquidation of loans, etc., prior to final settlement

No interim financing shall be made by any contracting agency under this chapter unless the terms of such financing provide for the liquidation by the war contractor of all loans, discounts, advance payments, or partial payments thereunder not later than the time of final payment of the amount due on the settlement of the termination claim or claims of the war contractor involved or such time thereafter as the contracting agency deems necessary for the liquidation of such interim financing in an orderly manner.

(g) Settlement of claims; validation of prior financing

Any contracting agency may settle, upon such terms and conditions as it deems proper, any claim or obligation due by or to the Government arising from or related to any interim financing made, acquired, or authorized by it. Any interim financing made, acquired, or authorized by any contracting agency before July 21, 1944, shall be valid to the extent it would be authorized under the provisions of this chapter if made after its effective date.

(July 1, 1944, ch. 358, § 8, 58 Stat. 655; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947, is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

APPLICATION TO TERMINATED WAR CONTRACTS

For application of this section to war contracts terminated at or before July 21, 1944, see section 124(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 124 of this title.

§ 109. Advance or partial payments to subcontractors; excessive payments, interest, liability of war contractor

(a) Any contracting agency may make advance or partial payments to any war contractor on account of any termination claim or claims, and may authorize, approve, or ratify any such advance or partial payments by any war contractor to his subcontractors, upon such conditions as it deems necessary to insure compliance with the provisions of subsection (b) of this section. Each contracting agency shall make final payments from time to time on partial settlements or on settlements fixing a minimum amount due before complete settlement, or as tentative payments before any settlement of the claim or claims.

(b) Where any such advance or partial payment is made to any war contractor by any contracting agency or by another war contractor under this section, except a final payment on a partial settlement, any amount in excess of the amount finally determined to be due on the termination claim shall be treated as a loan from the Government to the war contractor receiving it, and shall be payable upon demand together with a penalty computed at the rate of 6 per centum per annum, for the period from the date such excess advance or partial payment is received to the date on which such excess is repaid or extinguished. Where the advance or partial payment was made by a war contractor and authorized, approved, or ratified by any contracting agency, the war contractor making it shall not be liable for any such excess payment in the absence of fraud on his part and shall receive payment or credit from the Government for the amount of such excess payment.

(July 1, 1944, ch. 358, § 9, 58 Stat. 657.)

APPLICATION TO TERMINATED WAR CONTRACTS

For application of this section to war contracts terminated at or before July 21, 1944, see section 124(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 124 of this title.

§ 110. Guarantee of loans, advances, etc.

(a) By contract

Any contracting agency is authorized—

(1) to enter into contracts with any Federal Reserve bank, or other public or private financing institution, guaranteeing such financing institution against loss of principal or interest on loans, discounts, or advances or on commitments in connection therewith, which such financing institution may make to any war contractor or to any person who is or has been engaged in performing any operation deemed by such contracting agency to be connected with or related to war production, for the purpose of financing such war contractor or other person in connection with or in contemplation of the termination of one or more such war contracts or operations; and

(2) to make, enter into contracts to make, or to participate with any Government agency, any Federal Reserve bank or public or private financing institution in making loans, discounts, or advances, or commitments in connection therewith, for the purpose of financing any such war contractor or other person in connection with or in contemplation of the termination of such war contracts or operations.

(b) By assignment

Any such loan, discount, advance, guaranty, or commitment in connection therewith may be secured by assignment of, or covenants to assign, some or all of the rights of such war contractor or other person in connection with the termination of such war contracts or operations, or in such other manner as the contracting agency may prescribe.

(c) Federal Reserve bank as fiscal agent

Subject to such regulations as the Board of Governors of the Federal Reserve System may prescribe with the approval of the Administrator of General Services, any Federal Reserve bank is authorized to act, on behalf of the contracting agencies, as fiscal agent of the United States in carrying out the purposes of this chapter.

(d) Application of other laws

This section shall not limit or affect any authority of any contracting agency, under any other statute, to make loans, discounts, or advances, or commitments in connection therewith or guaranties thereof.

(July 1, 1944, ch. 358, § 10, 58 Stat. 657; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of 1946 Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

APPLICATION TO TERMINATED WAR CONTRACTS

For application of this section to war contracts terminated at or before July 21, 1944, see section 124(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 124 of this title.

§ 111. Termination of contracts

(a) Advance notice; prime contracts

In order to facilitate the efficient use of materials, manpower, and facilities for war and civilian purposes, each contracting agency—

(1) shall provide its prime contractors with notice of termination of their prime contracts as far in advance of the cessation of work thereunder as is feasible and consistent with the national security without permitting unneeded production or performance;

(2) shall establish procedures whereby prime contractors shall provide affected subcontractors with immediate notice of termination; and

(3) shall permit the continuation of some or all of the work under a terminated prime contract whenever the agency deems that such continuation will benefit the Government or is necessary to avoid substantial injury to the plant or property.

(b) Cessation of work without termination

Whenever a contracting agency hereafter directs a prime contractor to cease or suspend all or a substantial part of the work under a prime contract, without terminating the contract, then, unless the contract provides otherwise, (1) the contracting agency shall compensate the contractor for reasonable costs and expenses resulting from such cessation or suspension, and (2) if the cessation or suspension extends for thirty days or more, the contractor may elect to treat it as a termination by delivering written notice of his election so to do to the contracting agency, at any time before the contracting agency directs the prime contractor to resume work under the contract.

(c) Authority of Administrator of General Services; classes of contracts

The Administrator of General Services shall have no authority under this chapter to regulate or control the classes of contracts to be terminated by the contracting agencies.

(July 1, 1944, ch. 358, § 11, 58 Stat. 658; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

§ 112. Removal and storage of materials

(a) Termination inventory

It is the policy of the Government, upon the termination of any war contract, to assure the expeditious removal from the plant of the war contractor of the termination inventory not to be retained or sold by the war contractor.

(b) Statement on material of inventory

Any war contractor may submit to the contracting agency concerned or to any other Government agency designated by the Administrator of General Services, one or more statements showing the materials which such war contractor claims to be termination inventory under one or more war contracts and desires to have removed by the Government. Such statements shall be prepared in such form and detail, shall be submitted in such manner, through the prime contractor or otherwise, and shall be supported by such certificates or other data, as may be prescribed under this chapter.

(c) Removal and storage by Government agency

Within sixty days after the submission of any such statement by a war contractor, or such shorter period as may be prescribed under this chapter, or within such longer period as the war contractor may agree, the Government agency concerned (1) shall arrange, upon such terms and conditions as may be agreed, for the storage by the war contractor on his own prem-

ises or elsewhere of all such claimed termination inventory which the war contractor does not retain or dispose of, except any part which may be determined not to be allocable to the terminated war contract or contracts, or (2) shall remove from the plant or plants of the war contractor all of such claimed termination inventory not retained, disposed of, or stored by the war contractor or determined not to be allocable to the terminated war contract or contracts.

(d) Removal and storage by war contractor

Upon the failure of the Government so to arrange for storage by the war contractor or to remove any termination inventory within the period specified under subsection (c) of this section, the war contractor, subject to regulations prescribed under this chapter, may remove some or all of such termination inventory from his plant or plants and may store it on his own premises or elsewhere for the account and at the risk and expense of the Government, using reasonable care for its transportation and preservation. If any war contractor intends so to remove any claimed termination inventory, he shall deliver to the Government agency concerned written notice of the date fixed for removal and a statement showing the quantities and condition of the materials so to be removed, certified on behalf of the war contractor to have been prepared in accordance with a concurrent physical inventory of such materials. Such notice and statement shall be delivered at least twenty days in advance of the date fixed for removal and may be delivered before or after the expiration of the period specified under subsection (c) of this section. If the Government agency fails to check such materials, at or before the time of their removal by the war contractor, a certificate of the war contractor specifying the materials shown on such statement which were so removed, and filed with the Government agency concerned within thirty days after the date fixed for removal, shall constitute prima facie evidence against the United States as to the quantities and condition of the materials so removed, and the fact of their removal.

(e) Acquisition by Government agency of inventory material; liability

Notwithstanding any other provisions of law, but subject to subsection (h) of this section, the contracting agency concerned or the Administrator of General Services, or any Government agency designated by him, on behalf of the United States, may, by the exercise of any contract rights or otherwise, acquire and take possession of any termination inventory of any war contractor, and any materials removed by the Government or stored for its account under subsections (c) and (d) of this section, whether or not such materials are finally determined not to constitute termination inventory. With respect to any such materials, the Government shall be liable to any war contractor concerned only for their return to such war contractor or for their disposal value at the time of their removal or for the proceeds realized by the Government from their disposal, at the election of the Government agency concerned, unless the Government agency and the war contractor agree or have agreed on a different basis. Any amount so paid or payable to a war contractor for materials allocable to a terminated war contract shall be credited against the termination claim under such contract but shall not otherwise affect the amount due on the claim, unless the Government agency concerned and the war contractor agree or have agreed otherwise. Any materials to which the Administrator of General Services takes title under this section shall be delivered for disposal to any appropriate Government agency authorized to make such disposal.

(f) Postponement or delay of termination settlement

No contracting agency shall postpone or delay any termination settlement beyond the period specified in subsection (c) of this section for the purpose of awaiting disposal by the war contractor or the Government of any termination inventory reported in accordance with subsection (b) of this section.

(g) Government-owned machinery

Whenever any war contractor no longer requires, for the performance of any war contract, any Government-owned machinery, tools, or equipment installed in his plant for the performance of one or more war contracts, the Government agency concerned, upon written demand by the war contractor, and within sixty days after such demand or such other period as may be prescribed under this chapter, and upon such conditions as may be so prescribed, shall remove or provide for the removal of such machinery, tools, or equipment from such plant, unless the Government agency concerned and the war contractor, by facilities contract or otherwise, have made or make other provisions for the retention, storage, maintenance, or disposition of such machinery, tools or equipment. The Government agency concerned may waive or release on behalf of the United States any obligation of the war contractor with respect to such machinery, tools, or equipment upon such terms and conditions as the agency deems appropriate. Upon the failure of the Government so to remove or provide for removal of any such machinery, tools, or equipment, the war contractor, subject to regulations prescribed under this chapter, may remove all or part of such machinery, tools, or equipment from his plant and may store it on his own premises or elsewhere, for the account and at the risk and expense of the Government, using reasonable care for its transportation and preservation.

(h) Limitation on Government acquisition of inventories

Nothing in this chapter shall limit or affect the authority of the Department of the Army, Department of the Air Force, Navy Department, or Maritime Commission, respectively, to take over any termination inventories and to retain them for their use for any purpose or to dispose of such termination inventories for the purpose of war production, or to authorize any war contractor to retain or dispose of such termination inventories for the purpose of war production.

(l) Removal and storage by war contractor at own risk

Nothing in this section shall be construed to prevent the removal and storage of any termination inventory by any war contractor, at his own risk, at any time after termination of any war contract to which it is allocable.

(July 1, 1944, ch. 358, § 12, 58 Stat. 658; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380; 1949 Reorg. Plan No. 6, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1069.)

CHANGE OF NAME

The Department of the Air Force was inserted under the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 502, 503, and Secretary of Defense Transfer Order No. 6, eff. Jan. 15, 1948. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces", which in sections 3010 to 3013 and 8010 to 8013 continued the Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by Reorg. Plan No. 6 of 1949, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069, set out in Appendix to Title 5, Government Organization and Employees.

The "Maritime Commission" (meaning the United States Maritime Commission) was abolished by Reorg. Plan No. 21 of 1950, §§ 101, 102, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the chairman of said Federal Maritime Board should, ex officio, be such Administrator.

Reorg. Plan No. 7 of 1961, §§ 103, 304, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, established the Federal Maritime Commission and abolished the Federal Maritime Board, including the offices of the members thereof, and transferred functions of the Federal Maritime Board either to the Federal Maritime Commission or to the Secretary of Commerce.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

APPLICATION TO TERMINATED WAR CONTRACTS

For application of subsecs. (b) to (e) of this section to war contracts terminated at or before July 21, 1944, see section 124(a) of this title.

CROSS REFERENCES

Retroactive effect of pars. (b) to (e) of this section, see section 124(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 124 of this title.

§ 113. Appeals

(a) Failure to settle claims by agreement; preparation of findings; notice to war contractor

Whenever the contracting agency responsible for settling any termination claim has not settled the claim by agreement or has so settled only a part of the claim, (1) the contracting agency at any time may determine the amount due on such claim or such unsettled part, and prepare written findings indicating the basis of the determination, and deliver a copy of such findings to the war contractor, or (2) if the termination claim has been submitted in the manner and substantially the form prescribed under this chapter, the contracting agency, upon written demand by the war contractor for such findings, shall determine the amount due on the claim or unsettled part and prepare and deliver such findings to the war contractor within ninety days after the receipt by the agency of such demand. In preparing such findings, the contracting agency may require the war contractor to furnish such information and to submit to such audits as may be reasonably necessary for that purpose. Within thirty days after the delivery of any such findings, the contracting agency shall pay to the war contractor at least 90 per centum of the amount thereby determined to be due, after deducting the amount of any outstanding interim financing applicable thereto.

(b) Rights of war contractor

Whenever any war contractor is aggrieved by the findings of a contracting agency on his claim or part thereof or by its failure to make such findings in accordance with subsection (a) of this section, he may bring suit against the United States for such claim or such part thereof, in the Court of Claims or in a United States district court, in accordance with sections 1346, 2401, and 2402 of title 28, except that, if the contracting agency is the Reconstruction Finance Corporation, or any corporation organized pursuant to the Reconstruction Finance Corporation Act, or any corporation owned or controlled by the United States, the suit shall be brought against such corporation in any court of competent jurisdiction in accordance with existing law.

(c) Procedure

Any proceeding under subsection (b) of this section shall be governed by the following conditions:

(1) When any contracting agency provides a procedure within the agency for protest against such findings or for other appeal therefrom by the war contractor, the war contractor, before proceeding under subsection (b) of this section, (i) in his discretion may resort to such procedure within the time specified in his contract or, if no time is specified, within thirty days after the delivery to him of the findings; and (ii) shall resort to such procedure for protest or other appeal to the extent required by the Administrator of General Services, but failure of the contracting agency to act on any such required protest or appeal within thirty days shall operate as a refusal by the agency to modify its findings. Any revision of the findings by the contracting agency, upon protest or appeal within the agency, shall be treated as the findings of the agency for the purpose of appeal or suit under subsection (b) of this section. Notwithstanding any contrary provision in any war contract, no war contractor shall be required to protest or appeal from such findings within the contracting agency except in accordance with this paragraph.

(2) A war contractor may initiate proceedings in accordance with subsection (b) of this section (i) within ninety days after delivery to him of the findings by the contracting agency, or (ii) in case of protests or appeal within the agency, within ninety days after the determination of such protest or appeal, or (iii) in case of failure to deliver such findings, within one year after his demand therefor. If he does not initiate such proceedings within the time specified, he shall be precluded thereafter from initiating any proceedings in accordance with subsection (b) of this section, and the findings of the contracting agency shall be final and conclusive, or if no findings were made, he shall be deemed to have waived such termination claim.

(3) Notwithstanding any contrary provision in any war contract, the court shall not be bound by the findings of the contracting agency, but shall treat such findings as prima facie correct, and the burden shall be on the war contractor to establish that the amount due on his claim or part thereof exceeds the amount allowed by the findings of the contracting agency. Whenever the court finds that the war contractor failed to negotiate in good faith with the contracting agency for the settlement of his claim or part thereof before appeal or suit thereon, or failed to furnish to the agency any information reasonably requested by it regarding his termination claim or part thereof, or failed to prosecute diligently any protest or appeal required to be taken under subsection (c)(1)(ii) of this section, the court (i) may refuse to receive in evidence any information not submitted to the contracting agency; (ii) may deny interest on the claim or part thereof for such period as it deems proper; or (iii) may remand the case to the contracting agency for further proceedings upon such terms as the court may prescribe. Unless the case is remanded, the court shall enter the appropriate award or judgment on the basis of the law and facts, and may increase or decrease the amount allowed by the findings of the contracting agency.

(4) Any such proceedings shall not affect the authority of the contracting agency concerned to make a settlement of the termination claim, or any part thereof, by agreement with the war contractor at any time before such proceedings are concluded.

(d) Omitted

(e) Arbitration

The contracting agency responsible for settling any claim and the war contractor asserting the claim, by agreement, may submit all or any part of the termination claim to arbitration, without regard to the amount in dispute. Such arbitration proceedings shall be governed by the provisions of United States Arbitration Act to the same extent as if authorized by an effective agreement in writing between the Government and the war contractor. Any such arbitration award shall be final and conclusive upon the United States to the same extent as a settlement under subsection (c) of section 106 of this title, but shall not be subject to approval by any settlement review board.

(f) Conclusiveness of decisions

Whenever any dispute exists between any war contractor and a subcontractor regarding any termination claim, either of them, by agreement with the other, may submit the dispute to a contracting agency for mediation or arbitration whenever authorized by the agency or required by the Administrator of General Services.

Any award or decision in such proceedings shall be final and conclusive as to the parties so submitting any such dispute and shall not be questioned by the United States in settling any related claim, in the absence of fraud or collusion.

(July 1, 1944, ch. 358, § 13, 58 Stat. 660; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380; July 14, 1952, ch. 739, §§ 1, 2, 66 Stat. 627.)

REFERENCES IN TEXT

The Reconstruction Finance Corporation Act, referred to in subsec. (b), is act Jan. 22, 1932, ch. 8, 47 Stat. 5, as amended, which was formerly classified to chapter 14 (§ 601 et seq.) of Title 15, Commerce and Trade, and which has now been eliminated from the Code. For complete classification of this Act prior to its elimination from the Code, see Tables volume.

United States Arbitration Act, referred to in subsec. (e), is classified generally to Title 9, Arbitration.

CODIFICATION

"Sections 1346, 2401, and 2402 of title 28" was substituted for "subsection (20) of section 41 of title 28" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, section 1 of which enacted Title 28, Judiciary and Judicial Procedure.

Subsec. (d), which provided for appointment and duties of an Appeal Board, was omitted on authority of act July 14, 1952, ch. 739, §§ 1, 2, 66 Stat. 627, which abolished the Appeal Board and terminated all appeals, effective nine months after July 14, 1952. References in other subsections of this section to the Appeal Board were omitted in view of act July 14, 1952. As a result of these omissions, cl. (1) of subsec. (b), which authorized a war contractor to appeal to

the Appeal Board, was deleted, and cl. (2), which permits suits against the United States, became a part of subsec. (b) without numerical designation.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Reorg. Plan No. 1 of 1957, § 6(a), eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Reconstruction Finance Corporation.

APPLICATION TO TERMINATED WAR CONTRACTS

For application of this section to war contracts terminated at or before July 21, 1944, see section 124(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 117, 124 of this title; title 40 section 752.

§ 114. Court of Claims

(a) Appointment of auditors

For the purpose of expediting the adjudication of termination claims, the Court of Claims is authorized to appoint not more than ten auditors.

(b) Procedure

The Court of Claims, on motion of either of the parties, or on its own motion, may summon any and all persons with legal capacity to be sued to appear as a party or parties in any suit or proceeding of any nature whatsoever pending in said court to assert and defend their interests, if any, in such suits or proceedings, within such period of time prior to judgment as the Court of Claims shall prescribe. If the name and address of any such person is known or can be ascertained by reasonable diligence, and if he resides within the jurisdiction of the United States, he shall be summoned to appear by personal service; but if any such person resides outside of the jurisdiction of the United States, or is unknown, or if for any other good and sufficient reason appearing to the court personal service cannot be had, he may be summoned by publication, under such rules as the court may adopt, together with a copy of the summons mailed by registered mail to such person's last known address. The Court of Claims may, upon motion of the Attorney General, in any suit or proceeding where there may be any number of persons having possible interests therein, notify such persons to appear to assert and defend such interests. Upon failure so to appear, any and all claims or interests in claims of any such person against the United States, in respect of the subject matter of such suit or proceeding, shall forever be barred and the court shall have jurisdiction to enter judgment pro confesso upon any claim or contingent claim asserted on behalf of the United States against any person who, having been duly served with summons, fails to respond thereto, to the same extent and with like effect as if such person had appeared and had admitted the truth of all allegations made on behalf of the United States. Upon appearance by any person pursuant to any such summons or notice, the case as to such person shall, for all purposes, be treated as if an independent proceeding has been instituted by such person pursuant to sections 1491, 1496, 1501, 1503, and 2501 of title 28, and as if such independent proceeding had then been consolidated, for purposes of trial and determination, with the case in respect of which the summons or notice was issued, except that the United States shall not be heard upon any counterclaims, claims for damages or other demands whatsoever against such person, other than claims and contingent claims for the recovery of money hereafter paid by the United States in respect of the transaction or matter which constitutes the subject matter of such case, unless and until such person shall assert therein a claim, or an interest in a claim, against the United States, and the Court of Claims shall have jurisdiction to adjudicate, as between any and all adverse claimants, their respective several interests in any matter in suit and to award several judgments in accordance therewith.

(c) Jurisdiction

The jurisdiction of the Court of Claims shall not be affected by this chapter except to the extent necessary to give effect to this chapter, and no person shall recover judgment on any claim, or on any interest in any claim, in said court which such person would not have had a right to assert in said court if this section had not been enacted.

(July 1, 1944, ch. 358, § 14, 58 Stat. 663; July 28, 1953, ch. 253, § 5, 67 Stat. 226.)

CODIFICATION

"Sections 1491, 1496, 1501, 1503, and 2501 of title 28" were substituted for "section 250 of title 28" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, section 1 of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1953—Subsec. (a). Act July 28, 1953, struck out the provisions relating to the appointment of a maximum of twenty commissioners for the purpose of expediting the adjudication of termination claims.

COMMISSIONERS; TERMINATION OF APPOINTING AUTHORITY

Section 4(b) of act July 28, 1953, provided that the authority contained in subsec. (a) of this section respecting the appointment of commissioners "is hereby terminated". For permanent provisions respecting the appointment of commissioners by the Court of Claims, see section 792 of Title 28, Judiciary and Judicial Procedure.

SECTION UNAFFECTED BY REVISED TITLE 28

Act June 25, 1948, ch. 646, § 2(d), 62 Stat. 985, provided that nothing in Title 28, Judiciary and Judicial Procedure, should be construed as repealing any of the provisions of this section.

§ 115. Personal financial liability of contracting officers

(a) Whenever any payment is made from Government funds to any war contractor or other person as an advance, partial or final payment on any termination claim, or pursuant to any loan, guaranty, or agreement for the purchase of any loan, or any commitment in connection therewith, entered into by the Government, no officer or other Government agent authorizing or approving such payment or settlement, or certifying the voucher for such payment, or making the payment in accordance with a duly certified voucher, shall be personally liable for such payment, in the absence of fraud on his part. In settling the accounts of any disbursing officer the General Accounting Office shall allow any such disbursements made by him notwithstanding any other provisions of law.

(b) For the purpose of making termination settlements or interim financing any Government agency is authorized to rely upon such certificates of war contractors as it deems proper and to permit war contractors and other persons to rely upon such certificates without financial liability in the absence of fraud on their part.

(July 1, 1944, ch. 358, § 15, 58 Stat. 664.)

§ 116. Functions of General Accounting Office

(a) Review of terminated settlements

Any other provision of law notwithstanding, the function of the General Accounting Office with respect to any termination settlement made, authorized, ratified, or approved by a contracting agency shall be confined to determining, after final settlement, (1) whether the settlement payments to the war contractor were made in accordance with the settlement, and (2) whether the records transmitted to it, or other information, warrant a reasonable belief that the settlement was induced by fraud. For this purpose the General Accounting Office shall have the authority to examine any records maintained by any contracting agency or by any war contractor relating to any termination settlement.

(b) Certification of fraudulent settlements to Department of Justice

Whenever the Comptroller General is convinced that any settlement was induced by fraud, he shall so certify, together with all the facts relating thereto, to the Department of Justice, to the Administrator of General Services, and to the contracting agency concerned. Upon receipt of such certificate (1) the Department of Justice shall make an investigation to determine whether such settlement was induced by fraud, and (2) until the Department of Justice notifies the contracting agency that in its opinion the facts do not support the belief that the settlement was induced by fraud, the contracting agency, by set-off or otherwise, may withhold, from amounts owing to the war contractor by the United States under such settlement or otherwise, the amount of the settlement, or the portion thereof, which, in the opinion of the Comptroller General as stated in his certificate, was affected by the fraud. In any such case the Department of Justice shall take such action as it deems appropriate to recover payments made to such war contractor. The General Accounting Office shall not suspend credit to any disbursing officer on any disbursements made by him under such settlement in the absence of fraud on his part.

(c) Reports to Congress

The Comptroller General may investigate the settlements completed by each contracting agency for the purpose of reporting to the Congress from time to time on—

(1) whether the settlement methods and procedures employed by such agency are of a kind and type designed to result in expeditious and fair settlements in accordance with and subject to the provisions of this chapter and the orders and regulations of the Administrator of General Services;

(2) whether such methods and procedures are followed by such agency with care and efficiency; and

(3) whether such methods and procedures adequately protect the interest of the Government.

If in any such report the Comptroller General shall find that the settlement methods and procedures fail to meet the foregoing standards, he shall make suggestions and recommendations to such agency for the improvement of such methods and procedures and to the Congress for any additional legislation needed to carry out the policies of this chapter. At least thirty days before filing any such report with the Congress, the Comptroller General shall deliver a copy thereof to the agency concerned and the Administrator of General Services, and shall forward to the Congress together with such report any comments of such agency with respect thereto.

(d) Jurisdiction of Comptroller General

The jurisdiction of the Comptroller General of the United States shall not be affected by this chapter except to the extent necessary to give effect to the specific provisions thereof.

(July 1, 1944, ch. 358, § 16, 58 Stat. 664; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

§ 117. Defective, informal, and quasi contracts

(a) Lack of formalized contract

Where any person has arranged to furnish or furnished to a contracting agency or to a war contractor any materials, services, or facilities related to the prosecution of the war, without a formal contract, relying in good faith upon the apparent authority of an officer or agent of a contracting agency, written or oral instructions, or any other request to proceed from a contracting agency, the contracting agency shall pay such person fair compensation therefor.

(b) Technical defects or omissions

Whenever any formal or technical defect or omission in any prime contract, or in any grant of authority to an officer or agent of a contracting agency who ordered any materials, services, and facilities might invalidate the contract or commitment, the contracting agency (1) shall not take advantage of such defect or omission; (2) shall amend, confirm, or ratify such contract or commitment without consideration in order to cure such defect or omission; and (3) shall make a fair settlement of any obligation thereby created or incurred by such agency, whether expressed or implied, in fact or in law, or in the nature of an implied or quasi contract.

(c) Failure to settle

Where a contracting agency fails to settle by agreement any claim asserted under this section, the dispute shall be subject to the provisions of section 113 of this title.

(d) Formalization of obligations; termination date for filing claim

The Administrator of General Services shall require each contracting agency to formalize all such obligations and commitments within such period as the Administrator of General Services deems appropriate. No person shall be entitled to recover compensation, to receive a settlement of any alleged obligation, or to obtain the benefit of any amendment, confirmation, ratification, or formalization of any alleged contract or commitment under the provisions of subsections (a), (b), (c), or (d) of this section, unless such person shall, on or before one hundred and eighty days after June 28, 1954, have filed a claim therefor with the contracting agency.

(July 1, 1944, ch. 358, § 17, 58 Stat. 665; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan. No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380; June 28, 1954, ch. 403, § 1, 68 Stat. 300.)

AMENDMENTS

1954—Subsec. (d). Act June 28, 1954, added the sentence providing a termination date for filing claims.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

NONACCRUAL OF LIABILITY

Section 2 of act June 28, 1954, provided that no liability should accrue by reason of the enactment of section 1 of that act [amending subsec. (d) of this section] which would not otherwise have accrued.

§ 118. Administration

(a) Records and forms

The Administrator of General Services shall establish policies for such supervision and review within the contracting agencies of termination settlements and interim financing as he deems necessary and appropriate to prevent and detect fraud and to assure uniformity in administration and to provide for expeditious settlements. For this purpose he shall prescribe (1) such records to be prepared by the contracting agencies and by war contractors as he deems necessary in connection with such settlements and interim financing; and (2) the records in connection therewith to be transmitted to the General Accounting Office. He shall seek to reduce the amount of record keeping, reporting, and accounting in connection with the settlement of termination claims and interim financing to the minimum compatible with the reasonable protection of the public interest. Each contracting agency shall prescribe forms for use by war contractors in connection with termination settlements and interim financing to the extent it deems necessary and feasible.

(b) Repealed. Oct. 31, 1951, ch. 654, § 1(111), 65 Stat. 705

(c) Advance notice on cut-backs

The Administrator of General Services, by regulation, shall provide for making available to any interested Government agency such advance notice and other information on cutbacks in war production resulting from terminations or failures to renew or extend war contracts, as he deems necessary and appropriate.

(d) Investigations

The Administrator of General Services shall make such investigations as he deems necessary or desirable in connection with termination settlements and interim financing. For this purpose he may utilize the facilities of any existing agencies and if he determines that the facilities of existing agencies are inadequate, he may establish a unit in the General Services Administration to supplement and facilitate the work of existing agencies. He shall report to the Department of Justice any information received by him indicating any fraudulent practices, for appropriate action.

(e) Certification of fraudulent settlements to Department of Justice

Whenever any contracting agency or the Administrator of General Services believes that any settlement was induced by fraud, the agency or Administrator of General Services shall report the facts to the Department of Justice. Thereupon, (1) the Department of Justice shall make an investigation to determine

whether such settlement was induced by fraud, and (2) until the Department of Justice notifies the contracting agency that in its opinion the facts do not support the belief that the settlement was induced by fraud, the contracting agency, by set-off or otherwise, may withhold, from amounts owing to the war contractor by the United States under such settlement or otherwise, the amount of the settlement, or the portion thereof, which, in its opinion, was affected by the fraud. In any such case the Department of Justice shall take such action as it deems appropriate to recover payments made to such war contractor.

(July 1, 1944, ch. 358, § 18, 58 Stat. 666; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380; Oct. 31, 1951, ch. 654, § 1(111), 65 Stat. 705.)

AMENDMENTS

1951—Subsec. (b). Act Oct. 31, 1951 repealed provisions which related to preparation of information and reports regarding termination of war contracts, settlements of termination claims, interim financing, etc.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Department of the Treasury" was substituted for "Office of Contract Settlement" in subsec. (d) and references to "Director" were changed to "Secretary" throughout this section by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

§ 119. Fraudulent claims, vouchers, statements, etc.; jurisdiction

Every person who makes or causes to be made, or presents or causes to be presented to any officer, agent, or employee of any Government agency any claim, bill, receipt, voucher, statement, account, certificate, affidavit, or deposition, knowing the same to be false, fraudulent, or fictitious or knowing the same to contain or to be based on any false, fraudulent, or fictitious statement or entry, or who shall cover up or conceal any material fact, or who shall use or engage in any other fraudulent trick, scheme, or device, for the purpose of securing or obtaining, or aiding to secure or obtain, for any person any benefit, payment, compensation, allowance, loan, advance, or emolument from the United States or any Government agency in connection with the termination, cancelation, settlement, payment, negotiation, renegotiation, performance, procurement, or award of a contract with the United States or with any other person, and every person who enters into an agreement, combination, or conspiracy so to do, (1) shall pay to the United States an amount equal to 25 per centum of any amount thereby sought to be wrongfully secured or obtained but not actually received, and (2) shall forfeit and refund any such benefit, payment, compensation, allowance, loan, advance, and emolument received as a result thereof and (3) shall in addition pay to the United States the sum of $2,000 for each such act, and double the amount of any damage which the United States may have sustained by reason thereof, together with the costs of suit.

The several district courts of the United States, the several district courts of the Territories of the United States, within whose jurisdictional limits the person, or persons, doing or committing such act, or any one of them, resides or shall be found, shall, wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit, and such person or persons as are not inhabitants of or found within the district in which suit is brought may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct.

(July 1, 1944, ch. 358, § 19(a), (c)–(e), 58 Stat. 667; June 25, 1948, ch. 645, § 21, 62 Stat. 862.)

CODIFICATION

As originally enacted, the second undesignated paragraph contained the words, ", the District of Columbia" following "The several district courts of the United States". The words "District of Columbia" have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of title 28 which states that "the District of Columbia constitutes one judicial district".

Subsec. (b) of section 19 of act July 1, 1944, had been classified to section 590a of Title 18, Criminal Code and Criminal Procedure, prior to the general revision and enactment of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683.

REPEALS

Act June 25, 1948, repealed former subsecs. (a), (d), and (e) of section 19 of act July 1, 1944, leaving only subsec. (c) of section 19 of act July 1, 1944, in operation. Subject matter of former subsections is now covered by sections 201 287, 443, and 1001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1948 REPEAL

Section 20 of act June 25, 1948, provided that the amendment of this section should be effective Sept. 1, 1948.

CROSS REFERENCES

False, fictitious or fraudulent claims, see section 287 of Title 18, Crimes and Criminal Procedure.

False statements or entries generally, see section 1001 of Title 18.

War contracts penal provision as comprehending the definitions of terms used in this section, see section 443 of Title 18.

Wartime suspension of limitations, see section 3287 of Title 18.

§ 120. Powers and duties of contracting agencies

(a) Limitation

Each contracting agency shall have authority, notwithstanding any provisions of law other than contained in this chapter, (1) to make any contract necessary and appropriate to carry out

the provisions of this chapter; (2) to amend by agreement any existing contract, either before or after notice of its termination, on such terms and to such extent as it deems necessary and appropriate to carry out the provisions of this chapter; and (3) in settling any termination claim, to agree to assume, or indemnify the war contractor against, any claims by any person in connection with such termination claims or settlement. This subsection shall not limit or affect in any way any authority of any contracting agency under the First War Powers Act, 1941, or under any other statute.

(b) Evidence required; conclusiveness of determinations

Any contracting agency may prescribe the amount and kind of evidence required to identify any person as a war contractor, or any contract, agreement, or purchase order as a war contract for any of the purposes of this chapter. Any determination so made that any person is a war contractor, or that any contract, agreement, or purchase order is a war contract, shall be final and conclusive for any of the purposes of this chapter.

(c) Appropriations

There are authorized to be appropriated such sums as may be necessary for administering the provisions of this chapter.

(d) Validation of prior settlements

All policies and procedures relating to termination of war contracts, termination settlements, and interim financing, prescribed by the Secretary of the Treasury or any contracting agency, in effect on July 21, 1944, and not inconsistent with this chapter, shall remain in full force and effect unless and until superseded by the Administrator of General Services in accordance with this chapter, or by regulations of the contracting agency not inconsistent with this chapter or the policies prescribed by the Administrator of General Services.

(e) Impairment of contract

Nothing in this chapter shall be deemed to impair or modify any war contract or any term or provision of any war contract or any assignment of any claim under a war contract, without the consent of the parties thereto, if the war contract, or the term, provision, or assignment thereof, is otherwise valid.

(f) Aid to war contractors

Any contracting agency may authorize or direct its officers and employees, as a part of their official duties, to advise, aid, and assist war contractors in preparing and presenting termination claims, in obtaining interim financing, and in related matters, to such extent as it deems desirable. Such advice, aid, or assistance shall not constitute a violation of section 205 of title 18 or of any other law, provided the officer or employee does not receive therefor benefit or compensation of any kind, directly or indirectly, from any war contractor.

(July 1, 1944, ch. 358 § 20, 58 Stat. 668; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; June 30, 1947, ch. 166, title II, § 207, 61 Stat. 209; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

REFERENCES IN TEXT

The First War Powers Act, 1941, referred to in subsec. (a), is act Dec. 18, 1941, ch. 593, 55 Stat. 838, which enacted sections 32 to 37 and 601 to 605, 611, and 616 to 622 of Title 50, App., War and National Defense, and amended section 95a of Title 12, Banks and Banking, and section 5 of Title 50, App. The First War Powers Act, 1941, was substantially repealed, with certain exceptions, by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 651. For complete classification of this Act to the Code, see Tables volume.

CODIFICATION

In subsec. (f), "section 205 of title 18" was substituted for "section 109 of the Criminal Code (18 U.S.C. 198)" on authority of act June 25, 1948, ch. 645, 62 Stat. 683, section 1 of which enacted Title 18, Crimes and Criminal Procedure, and on authority of Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126.

Subsec. (g), relating to the duties of Smaller War Plants Corporation, was omitted on the authority of section 207 of act June 30, 1947, which provided: "The liquidation of the affairs of the Smaller War Plants Corporation administered by the Reconstruction Finance Corporation pursuant to Executive Order 9665 shall be carried out by the Reconstruction Finance Corporation, notwithstanding the provisions of the last paragraph of section 5 of the First War Powers Act, 1941 [section 605 of Title 50, Appendix, War and National Defense]. The Smaller War Plants Corporation is hereby abolished."

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

§ 121. Administrator of General Services; additional duties

In addition to his other functions under this chapter, the Administrator of General Services shall—

(a) promote the training of personnel for termination settlement and interim financing by contracting agencies, war contractors, and financing institutions;

(b) Omitted.

(c) promote decentralization of the administration of termination settlements and interim financing by fostering delegation of authority within contracting agencies and to war contractors, to the extent he deems necessary and feasible; and

(d) consult with war contractors through advisory committees or such other methods as he deems appropriate.

(July 1, 1944, ch. 358, § 21, 58 Stat. 669; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; June 30, 1947, ch. 166, title II, § 207, 61 Stat. 209; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

CODIFICATION

Subsec. (b), providing for Administrators' collaboration with Smaller War Plants Corporation in protecting interests of smaller war contractors, was omitted on authority of section 207 of act June 30, 1947, which provided: "The liquidation of the affairs of the Smaller War Plants Corporation administered by the Reconstruction Finance Corporation pursuant to Executive Order 9665 shall be carried out by the Reconstruction Finance Corporation, notwithstanding the provisions of the last paragraph of section 5 of the First War Powers Act, 1941 [section 605 of Title 50, Appendix, War and National Defense]. The Smaller War Plants Corporation is hereby abolished."

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 122. Use of appropriated funds

Any contracting agency is authorized—

(a) to use for interim financing, the payment of claims, and for any other purposes authorized in this chapter any funds which have heretofore been appropriated or allocated or which may hereafter be appropriated or allocated to it, or which are or may become available to it, for such purposes or for the purposes of war production or war procurement;

(b) to use any such funds appropriated, allocated, or available to it for expenditures for or in behalf of any other contracting agency for the purposes authorized in this chapter; and

(c) to determine by agreement, joint estimate, or any other method authorized by the Administrator of General Services, the part of any expenditure made pursuant to subsection (b) of this section to be paid by each contracting agency concerned and to make transfers of funds between such contracting agencies accordingly. Transfers of funds between appropriations carried upon the books of the Treasury shall be made by the Administrator of General Services in accordance with joint requests of the contracting agencies involved.

(July 1, 1944, ch. 358, § 22, 58 Stat. 670; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1949, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

§ 123. Delegation of authority by Administrator of General Services

(a) Officers and agencies of General Service Administration and other governmental agencies

The Administrator of General Services may delegate any authority and discretion conferred upon him by this chapter to such officers and agencies of the General Services Administration as he may designate, and may delegate such authority and discretion, upon such terms and conditions as he may prescribe, to the head of any Government agency to the extent necessary to the handling and solution of problems peculiar to that agency.

(b) Authority delegated to other governmental agencies

The head of any Government agency may delegate any authority and discretion conferred upon him or his agency by or pursuant to this chapter to any officer, agent, or employee of such agency or to any other Government agency, and may authorize successive redelegations of such authority and discretion.

(c) Joint exercise of delegated authority

Any two or more Government agencies may exercise jointly any authority and discretion conferred upon each of them individually by or pursuant to this chapter.

(d) Application to other laws

Nothing in this chapter shall prevent the Administrator of General Services from exercising any authority conferred upon him by any other statute.

(July 1, 1944, ch. 358, § 23, 58 Stat. 670; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

CODIFICATION

The phrase "such officers and agencies of the General Services Administration as he may designate" was

substituted for "any Deputy Director" on the authority of section 102(b) of act June 30, 1949.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

§ 124. Effective date; applicability to lend lease contracts

(a) This chapter shall become effective twenty days after July 1, 1944. With the exception of the provisions of paragraphs (b), (c), (d), and (e) of section 112 of this title, and sections 106 to 110, and 113 of this title, this chapter shall be applicable in the case of any terminated war contract which has been finally settled at or before the effective date of this chapter.

(b) Nothing in this chapter shall limit or affect any authority conferred by sections 411 to 419 of title 22, or Acts supplemental thereto.

(July 1, 1944, ch. 358, § 24, 58 Stat. 670.)

REFERENCES IN TEXT

Sections 411 to 419 of title 22, referred to in subsec. (b), have been omitted from the Code as executed.

§ 125. Exemption of certain contracts outside continental United States or in Alaska

Subject to policies prescribed by the Administrator of General Services, any contracting agency may exempt from some or all of the provisions of this chapter (a) any war contract made or to be performed outside the continental limits of the United States or in Alaska, or (b) any termination inventory situated outside of the continental limits of the United States or in Alaska, or (c) any modification of a war contract pursuant to its terms for the purpose of changing plans or specifications applicable to the work without substantially reducing its extent.

(July 1, 1944, ch. 358, § 25, 58 Stat. 670; Ex. Ord. No. 9809, § 8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.)

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of the General Services by section 102(b) of act June 30, 1949. See section 752(b) of Title 40, Public Buildings, Property, and Works.

"Secretary" was substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

CHAPTER 3—PROCUREMENT OF SUPPLIES AND SERVICES BY ARMED SERVICES

§§ 151 to 162. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 151, act Feb. 19, 1948, ch. 56, § 2, 62 Stat. 21, related to purchases and contracts for supplies and services for the Armed Services, stated the Congressional declaration of policy, provided for advertising requirements, excepted certain purchases and contracts, authorized reference to Attorney General where there is any evidence of violation of antitrust laws, excluded certain authorizations and contracts. See now sections 2301, 2303 to 2305 of Title 10, Armed Forces.

Section 152, acts Feb. 19, 1948, ch. 65, § 3, 62 Stat. 22; Aug. 9, 1955, ch. 628, § 15, 69 Stat. 551, related to advertisements for bids, opening of bids and award or rejection of bids. See now section 2305 of title 10. Act Aug. 9, 1955, ch. 628, § 15, 69 Stat. 551, which amended section 152 of this title, was repealed by Pub. L. 85-861, § 36A, Sept. 2, 1958, 72 Stat. 1569.

Section 153, acts Feb. 19, 1948, ch. 65, § 4, 62 Stat. 23; Oct. 31, 1951, ch. 652, 65 Stat. 700, provided for types of contracts and examination of books, records, etc., of contractors. See now sections 2306 and 2313 of Title 10.

Section 154, act Feb. 19, 1948, ch. 65, § 5, 62 Stat. 24, authorized advance payments under negotiated contracts. See now section 2307 of Title 10.

Section 155, act Feb. 19, 1948, ch. 65, § 6, 62 Stat. 24, provided for remission of liquidated damages. See now section 2312 of Title 10.

Section 156, act Feb. 19, 1948, ch. 65, § 7, 62 Stat. 24, provided for determinations and decisions, powers of agency head, finality of decisions, delegations of powers, non-delegable powers, written decisions, preservation of data. See now sections 2304, 2310, and 2311 of Title 10.

Section 157, act Feb. 19, 1948, ch. 65, § 8, 62 Stat. 24, related to exemption of purchases or contracts from certain other provisions of law. See now section 2304 of Title 10.

Section 158, act Feb. 19, 1948, ch. 65, § 9, 62 Stat. 24, defined the terms "agency head" and "supplies". See now sections 2302 and 2303 of Title 10.

Section 159, act Feb. 19, 1948, ch. 65, § 10, 62 Stat. 25, related to assignment and delegation of joint procurement responsibilities by agency head, and allocation of appropriations. See now sections 2308 and 2309 of Title 10.

Section 160, act Feb. 19, 1948, ch. 65, § 11(b), 62 Stat. 25, provided that sections 5, 6, 6a, and 13 of this title should be inapplicable to procurement of supplies and services. See now section 2314 of Title 10.

Section 161, act Feb. 19, 1948, ch. 65, § 12, 62 Stat. 26, related to concurrent authority of Secretaries of Army, Navy and Air Force. See now section 2381 of Title 10.

Section 162, act July 10, 1952, ch. 630, title VI, § 638, 66 Stat. 537, related to obligation of funds by Department of Defense for procurement and distribution of supplies or equipment. See now section 2202 of Title 10.

CHAPTER 4—PROCUREMENT PROCEDURES

SUBCHAPTER I—GENERAL PROVISIONS

Sec.

201 to 205. Transferred.

SUBCHAPTER II—GENERAL SERVICES ADMINISTRATION

211 to 219. Transferred.

SUBCHAPTER III—PROPERTY MANAGEMENT

Sec.
231 to 240. Transferred.

SUBCHAPTER IV—PROCUREMENT PROVISIONS

251. Declaration of purpose of this subchapter.
252. Purchases and contracts for property.
(a) Applicability of subchapter; delegation of authority.
(b) Small business concerns; share of business; advance publicity on negotiated purchases and contracts for property.
(c) Negotiated purchases and contracts for property; conditions.
(d) Bids in violation of antitrust laws.
(e) Exceptions to section.
(f) Carriage of cargo; specification of container size.
253. Advertising requirements.
254. Negotiated contracts.
(a) Requirements.
(b) Barred contracts; fee limitation; determination of use; advance notification.
(c) Examination of books, records, etc., of contractors; time limitation; exemptions; exceptional conditions; reports to Congress.
254a. Cost-type research and development contracts with educational institutions.
255. Advance or other payments.
(a) Conditions.
(b) Amount.
(c) Security.
256. Repealed.
256a. Waiver of liquidated damages.
257. Administrative determinations.
(a) Conclusiveness; delegation of powers.
(b) Nondelegable powers; powers delegable to certain persons.
(c) Basis of determinations; finding conclusive; preservation of findings; copy.
(d) Preservation of data.
258. Laws applicable to contracts.
259. Definitions.
260. Laws not applicable to contracts.

SUBCHAPTER V—FOREIGN EXCESS PROPERTY

271 to 274. Transferred.

SUBCHAPTER VI—FEDERAL RECORD MANAGEMENT

281 to 291. Transferred.

SUBCHAPTER I—GENERAL PROVISIONS

§§ 201 to 205. Transferred

CODIFICATION

Section 201, act June 30, 1949, ch. 288, § 2, 63 Stat. 378, which related to Congressional declaration of policy, was transferred to section 471 of Title 40, Public Buildings, Property, and Works.

Section 202, acts June 30, 1949, ch. 288, § 3, 63 Stat. 378; Sept. 5, 1950, ch. 849, §§ 7(a), 8(a), 64 Stat. 590, which related to definitions, was transferred to section 472 of Title 40.

Section 203, acts June 30, 1949, ch. 288, title VI, § 601, formerly title V, § 501, 63 Stat. 399, renumbered Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583, which related to applicability of existing provisions, was transferred to section 473 of Title 40.

Section 204, acts June 30, 1949, ch. 288, title VI, § 602(c), (d), formerly title V, § 502(c), (d), 63 Stat. 401, renumbered and amended Sept. 5, 1950, ch. 849, §§ 6(a), (b), 7(e), (f), 8(c), 64 Stat. 583, 590, which related to exemptions for Congress, departments, agencies, corporations, and persons, was transferred to section 474 of Title 40.

Section 205, acts June 30, 1949, ch. 288, title VI, § 603, formerly title V, § 503, 63 Stat. 403, renumbered and amended Sept. 5, 1950, ch. 849, §§ 6(a), (b), 7(g), 64 Stat. 583, 590, which related to authorization of appropriations and fund transfer authority, was transferred to section 475 of Title 40.

SUBCHAPTER II—GENERAL SERVICES ADMINISTRATION

§§ 211 to 219. Transferred

Section 211, act June 30, 1949, ch. 288, title I, § 101, 63 Stat. 379, which related to General Services Administration, was transferred to section 630 of former Title 5, Executive Departments and Government Officers and Employees, and subsequently retransferred to section 751 of Title 40, Public Buildings, Property, and Works.

Section 212, act June 30, 1949, ch. 288, title I, § 102, 63 Stat. 380, which related to transfer of functions, was transferred to section 630a of former Title 5, Executive Departments and Government Officers and Employees, and subsequently retransferred to section 752 of Title 40.

Section 213, act June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380, which related to transfer of affairs of Federal Works Agency, was transferred to section 630b of former Title 5, Executive Departments and Government Officers and Employees, and subsequently retransferred to section 753 of Title 40.

Section 214, act June 30, 1949, ch. 288, title I, § 104, 63 Stat. 381, which related to records management, was transferred to section 391 of former Title 44, Public Printing and Documents, and is now covered by sections 1506, 2102, 2301, 2501, and 2902 of Title 44, Public Printing and Documents.

Section 215, act June 30, 1949, ch. 288, title I, § 105, 63 Stat. 381, which related to transfer and liquidation of War Assets Administration, was transferred to section 630c of former Title 5, Executive Departments and Government Officers and Employees, and was subsequently repealed by section 8(a) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 632.

Section 216, act June 30, 1949, ch. 288, title I, § 106, 63 Stat. 381, which related to redistribution of Administrator's functions, was transferred to section 630d of former Title 5, Executive Departments and Government Officers and Employees, and subsequently retransferred to section 754 of Title 40, Public Buildings, Property, and Works.

Section 217, act June 30, 1949, ch. 288, title I, § 107, 63 Stat. 382, which related to transfer of funds, was transferred to section 630e of former Title 5, Executive Departments and Government Officers and Employees, and subsequently retransferred to section 755 of Title 40.

Section 218, act June 30, 1949, ch. 288, title I, § 108, 63 Stat. 382, which related to status of transferred employees, was transferred to section 630f of former Title 5, Executive Departments and Government Officers and Employees, and was subsequently repealed by section 8(a) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 632.

Section 219, acts June 30, 1949, ch. 288, title I, § 109, 63 Stat 382; Sept. 5, 1950, ch. 849, §§ 1, 2(a), (b), 3, 64 Stat. 578, which related to the General Supply Fund, was transferred to section 630g of former Title 5, Executive Departments and Government Officers and Employees, and subsequently retransferred to section 756 of Title 40, Public Buildings, Property, and Works.

SUBCHAPTER III—PROPERTY MANAGEMENT

§§ 231 to 240. Transferred

Section 231, acts June 30, 1949, ch. 288, title II, § 201, 63 Stat. 383; Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591; Sept. 5, 1950, ch. 849, § 8(b), 64 Stat. 591, which related to procurement, warehousing, and related activities, was transferred to section 481 of Title 40, Public Buildings, Property, and Works.

Section 231a, act Oct. 26, 1949, ch. 737, 63 Stat. 920, which related to clarification of status of Architect of

the Capitol under this chapter, was transferred to section 482 of Title 40.

Section 232, acts June 30, 1949, ch. 288, title II, § 202, 63 Stat. 384; Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591, which related to property utilization, was transferred to section 483 of Title 40.

Section 233, acts June 30, 1949, ch. 288, title II, § 203, 63 Stat. 385; Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591; Sept. 5, 1950, ch. 849, § 4, 64 Stat. 579, which related to disposal or surplus property, was transferred to section 484 of Title 40.

Section 234, act June 30, 1949, ch. 288, title I, § 204, 63 Stat. 388, which related to proceeds from transfer, sale, etc., of property, was transferred to section 485 of Title 40.

Section 235, acts June 30, 1949, ch. 288, title II, § 205, 63 Stat. 389; Sept. 5, 1950, ch. 849, § 9, 64 Stat. 591, which related to policies, regulations, and delegations, was transferred to section 486 of Title 40.

Section 236, acts June 30, 1949, ch. 288, title II, § 206, 63 Stat. 390; Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591, which related to surveys of government property and property management practices, was transferred to section 487 of Title 40.

Section 237, act June 30, 1949, ch. 288, title II, § 207, 63 Stat. 391, which related to applicability of antitrust laws to property disposal, was transferred to section 488 of Title 40.

Section 238, acts June 30, 1949, ch. 288, title II, § 208, 63 Stat. 391; Sept. 5, 1950, ch. 849, § 7(b), (c), 64 Stat. 590, which related to appointment and compensation of personnel, was transferred to section 630h of former Title 5, Executive Departments and Government Officers and Employees, and was subsequently transferred to section 758 of Title 40.

Section 239, act June 30, 1949, ch. 288, title II, § 209, 63 Stat. 392, which related to civil remedies and penalties, was transferred to section 489 of Title 40.

Section 239a, act June 30, 1949, ch. 288, title II, § 210, as added Sept. 5, 1950, ch. 849, § 5(c), 64 Stat. 580, which related to operation of buildings and related activities by the Administrator, was transferred to section 490 of Title 40.

Section 239b, act June 30, 1949, ch. 288, title II, § 211, as added Sept. 5, 1950, ch. 849, § 5(c), 64 Stat. 580, which related to motor vehicle identification, was transferred to section 491 of Title 40.

Section 240, act June 30, 1949, ch. 288, title II, § 212, formerly § 210, 63 Stat. 393, renumbered Sept. 5, 1950, ch. 849, § 5(a), 64 Stat. 580, which related to reports to Congress, was transferred to section 492 of Title 40.

SUBCHAPTER IV—PROCUREMENT PROVISIONS

Subchapter Referred to in Other Sections

This subchapter is referred to in title 5 section 575; title 15 section 205f; title 16 section 793; title 31 section 418; title 40 sections 356a, 474, 602a, 604, 752, 758; title 42 section 1592d; title 43 section 1736; title 44 section 311; title 50 App. section 2393.

§ 251. Declaration of purpose of this subchapter

The purpose of this subchapter is to facilitate the procurement of property and services.

(June 30, 1949, ch. 288, title III, § 301, 63 Stat. 393; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594.)

Amendments

1952—Act July 12, 1952, substituted "property" for "supplies".

Definitions

The definitions in section 472 of Title 40, Public Buildings, Property, and Works, apply to terms appearing in this subchapter.

Effective Date

Section effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

Commission on Government Procurement

Pub. L. 91-129, Nov. 26, 1969, 83 Stat. 269, as amended by Pub. L. 92-47, July 9, 1971, 85 Stat. 102, established the Commission on Government Procurement, which was to study and investigate statutes, rules, regulations, procedures, and practices affecting Government procurement and to submit a final report to Congress on or before Dec. 31, 1972, on the results of this study, including recommendations for changes designed to promote economy, efficiency, and effectiveness in the procurement of goods, services, and facilities by and for the executive branch of the Government. The Commission terminated 120 days after submission of the final report.

Section Referred to in Other Sections

This section is referred to in title 40 section 752.

§ 252. Purchases and contracts for property

(a) Applicability of subchapter; delegation of authority

Executive agencies shall make purchases and contracts for property and services in accordance with the provisions of this subchapter and implementing regulations of the Administrator; but this subchapter does not apply—

(1) to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration; or

(2) when this subchapter is made inapplicable pursuant to section 474 of title 40 or any other law, but when this subchapter is made inapplicable by any such provision of law, sections 5 and 8 of this title shall be applicable in the absence of authority conferred by statute to procure without advertising or without regard to said section 5 of this title.

(b) Small business concerns; share of business; advance publicity on negotiated purchases and contracts for property

It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for property and services for the Government shall be placed with small business concerns. Whenever it is proposed to make a contract or purchase in excess of $10,000 by negotiation and without advertising, pursuant to the authority of paragraph (7) or (8) of subsection (c) of this section, suitable advance publicity, as determined by the agency head with due regard to the type of property involved and other relevant considerations, shall be given for a period of at least fifteen days, wherever practicable, as determined by the agency head.

(c) Negotiated purchases and contracts for property; conditions

All purchases and contracts for property and services shall be made by advertising, as provided in section 253 of this title, except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed $10,000;

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institution;

(6) the property or services are to be procured and used outside the limits of the United States and its possessions;

(7) for medicines or medical property;

(8) for property purchased for authorized resale;

(9) for perishable or nonperishable subsistence supplies;

(10) for property or services for which it is impracticable to secure competition;

(11) the agency head determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test;

(12) for property or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(13) for equipment which the agency head determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in special situations or in particular localities in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest;

(14) for property or services as to which the agency head determines that bid prices after advertising therefor are not reasonable (either as to all or as to some part of the requirements) or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all or some of the bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder and (B) the negotiated price is the lowest negotiated price offered by any responsible supplier; or

(15) otherwise authorized by law, except that section 254 of this title shall apply to purchases and contracts made without advertising under this paragraph.

(d) Bids in violation of antitrust laws

If in the opinion of the agency head bids received after advertising evidence any violation of the antitrust laws he shall refer such bids to the Attorney General for appropriate action.

(e) Exceptions to section

This section shall not be construed to (A) authorize the erection, repair, or furnishing of any public building or public improvement, but such authorization shall be required in the same manner as heretofore, or (B) permit any contract for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items to be negotiated without advertising as required by section 253 of this title, unless such contract is to be performed outside the continental United States or unless negotiation of such contract is authorized by the provisions of paragraphs (1), (2), (3), (10), (11), (12), or (14) of subsection (c) of this section.

(f) Carriage of cargo; specification of container size

No contract for the carriage of Government property in other than Government-owned cargo containers shall require carriage of such property in cargo containers of any stated length, height, or width.

(June 30, 1949, ch. 288, title III, § 302, 63 Stat. 393; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Aug. 28, 1958, Pub. L. 85-800, §§ 1-3, 72 Stat. 966; Nov. 8, 1965, Pub. L. 89-343, §§ 1, 2, 79 Stat. 1303; Nov. 8, 1965, Pub. L. 89-348, § 1(2), 79 Stat. 1310; Mar. 16, 1968, Pub. L. 90-268, § 4, 82 Stat. 50; July 25, 1974, Pub. L. 93-356, § 3, 88 Stat. 390.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (d), are classified generally to section 1 et seq. of Title 15, Commerce and Trade.

AMENDMENTS

1974—Subsec. (c)(3). Pub. L. 93-356 substituted "$10,000" for "$2,500".

1968—Subsec. (f). Pub. L. 90-268 added subsec. (f).

1965—Subsec. (a). Pub. L. 89-343, § 1, substituted provisions requiring executive agencies to make purchases and contracts for property and services in accordance with the provisions of this subchapter and implementing regulations of the Administrator, exempting the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration from the application of this subchapter, and making this subchapter inapplicable when it is so made by law, for provisions which made this subchapter applicable to purchases and contracts for property or services made by the General Services Administration for the use of such agency or otherwise, or by any other executive agency (except the departments and activities specified in section 2303(a) of Title 10) in conformity with authority to apply such provisions delegated by the Administrator in his discretion.

Subsec. (c)(11). Pub. L. 89-348 deleted the proviso which required a semiannual report to be furnished to the Congress setting forth the name of each contractor with whom a contract has been entered into pursuant to this paragraph, the amount of the contract, and, with due consideration given to the national security, a description of the work required to be performed thereunder.

Subsec. (c)(15). Pub. L. 89-343, § 2, inserted "except that section 254 of this title shall apply to purchases and contracts made without advertising under this paragraph".

1958—Subsec. (a). Pub. L. 85-800, § 1, among other changes, substituted "or" for "and" in paragraph (1), substituted provisions excepting application of subchapter to departments and activities in section 2303(a) of title 10 for provisions which excepted agencies named in section 151(a) of this title, substituted provisions applying subchapter to agencies in conformity with authority delegated by Administrator in his discretion for provisions which applied chapter in conformity with authority delegated him pursuant to this subsection, and eliminated provisions authorizing Administrator to delegate authority for use of two or more agencies, and other cases where delegation is advantageous to Government in paragraph (2).

Subsec. (c). Pub. L. 85-800, § 2, substituted in par. (3) "$2,500" for "$1,000", eliminated proviso barring agencies other than General Services Administration from making purchases in excess of $500 except under authority to procure for two or more agencies, added par. (9), and renumbered former pars. (9) to (14) as pars. (10) to (15).

Subsec. (e). Pub. L. 85-800, § 3, substituted "(10) to (12), or (14)" for "(9) to (11), or (13)".

1952—Subsecs. (a) to (c). Act July 12, 1952, substituted "property" for "supplies" wherever appearing.

DEFINITIONS

The definitions in section 472 of Title 40, Public Buildings, Property, and Works, apply to terms appearing in this subchapter.

EFFECTIVE DATE

Section effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

EMERGENCY RELIEF FOR SMALL BUSINESS CONCERNS WITH GOVERNMENT CONTRACTS

Pub. L. 94-190, Dec. 31, 1975, 89 Stat. 1095, provided:

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Small Business Emergency Relief Act'.

"POLICY

"SEC. 2. It is the policy of Congress to provide relief to small business concerns which have fixed-price Government contracts in cases where such concerns have suffered or can be expected to suffer serious financial loss because of significant and unavoidable difficulties during performance because of the energy crisis or rapid and unexpected escalations of contract costs.

"DEFINITIONS

"SEC. 3. As used in this Act—

"(1) the term 'executive agency' means an executive department, a military department, and an independent establishment within the meaning of sections 101, 102, and 104(1) respectively, of title 5, United States Code, and also a wholly owned Government corporation within the meaning of section 101 of the Government Corporation Control Act [section 846 of Title 31, Money and Finance]; and

"(2) the term 'small business concern' means any concern which falls under the size limitations of the 'Small Business Administrator's Definitions of Small Business for Government Procurement'.

"AUTHORITY

"SEC. 4. (a) Pursuant to an application by a small business concern, the head of any executive agency may terminate for the convenience of the Government any fixed-price contract between that agency and such small business concern, upon a finding that—

"(1) during the performance of the contract, the concern has suffered or can be expected to suffer serious financial loss due to significant unanticipated cost increases directly affecting the cost of contract compliance; and

"(2) the conditions which have caused or are causing such cost increases were, or are being, experienced generally by other small business concerns in the market at the same time and are not caused by negligence, underbidding, or other special management factors peculiar to that small business concern.

"(b) Upon application under subsection (a) by a small business concern to terminate a fixed-price contract between an executive agency and such small business concern, the head of the executive agency may modify the terms of the contract in lieu of termination for the convenience of the Government only if he finds after review of the application that—

"(1)(a) the agency would reprocure the supplies or services in the event that the contract was terminated for the convenience of the Government; and

"(b) the cost of terminating the contract for the convenience of the Government plus the cost of reprocurement would exceed the amount of the contract as modified; and

"(2) Any such modification shall be made in compliance with cost comparison and compensation guidelines to be issued by the Administrator of the Office of Federal Procurement Policy. Such cost comparison and compensation guidelines shall be promulgated by the Administrator not later than 10 days after enactment of this Act [Dec. 31, 1975].

"(c) If a small business concern in performance of a fixed-price Government contract experiences or has experienced shortages of energy, petroleum products, or products or components manufactured or derived therefrom or impacted thereby, and such shortages result in a delay in the performance of a contract, the head of the agency, or his designee, shall provide by modification to the contract for an appropriate extension of the contract delivery date or period of performance.

"(d) A small business concern requesting relief under subsection (a) shall support that request with the following documentation and certification:

"(1) a brief description of the contract, indicating the date of execution and of any amendment thereto, the items being procured, the price and delivery schedule, and any revision thereof, and any other special contractual provision as may be relevant to the request;

"(2) a history of performance indicating when work under the contract or commitment was begun, the progress made as of the date of the application, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion thereof;

"(3) a statement of the factors which have caused the loss under the contract;

"(4) a statement as to the course of events anticipated if the request is denied;

"(5) a statement of payments received, payments due and payments yet to be received or to become due, including advance and progress payments, and amounts withheld by the Government, and information as to other obligations of the Government, if any, which are yet to be performed under the contract;

"(6) a statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances and profit;

"(7) a statement and evidence of the contractor's present estimate of total costs under the contract if enabled to complete, broken down between costs accrued to date of request, and runout costs, and as between costs for which the contractor has made payment and those for which he is indebted at the time of the request;

"(8) a statement and evidence of the contractor's estimate of the final price of the contract, giving effect to all escalation, changes, extras, and other comparable factors known or contemplated by the contractor;

"(9) a statement of any claims known or contemplated by the contractor against the Government involving the contract in question, other than those referred to under (8) above;

"(10) an estimate of the contractor's total profit or loss under the contract if required to complete at the original contract price;

"(11) an estimate of the total profits from other Government business, and all other sources, during the period from the date of the first contract involved to the latest estimated date of completion of any other contracts involved;

"(12) balance sheets, certified by a certified public accountant, as of the end of the contractor's fiscal year first preceding the date of the first contract, as of the end of each subsequent fiscal year, and as of the date of the request together with income statements for annual periods subsequent to the date of the first balance sheet; and

"(13) a list of all salaries, bonuses, and all other forms of compensation of the principal officers or partners and of all dividends and other withdrawals, and all payments to stockholders in any form since the date of the first contract involved.

"DELEGATION

"SEC. 5. The head of each executive agency shall delegate authority conferred by this Act, to the extent practicable, to an appropriate level that will permit the expeditious processing of applications under this Act and to insure the uniformity of its application.

"LIMITATIONS

"SEC. 6. (a) The authority prescribed in section 4(a) shall apply only to contracts which have not been completely performed or otherwise terminated and which were entered into during the period from August 15, 1971, through October 31, 1974.

"(b) The authority conferred by section 4(a) of this Act shall terminate September 30, 1976."

NON-APPLICABILITY OF NATIONAL EMERGENCIES ACT

The provisions of the National Emergencies Act (Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255) shall not apply to the powers and authorities conferred by this section and actions taken hereunder, see section 1651 of Title 50, War and National Defense.

EX. ORD. NO. 10936. REPORTS OF IDENTICAL BIDS

Ex. Ord. No. 10936, Apr. 24, 1961, 26 F.R. 3555, provided:

WHEREAS it is in the interest of the United States to obtain truly competitive bids in connection with its procurement and sale of property and services pursuant to public invitations for bids and the prevalence of identical bidding is harmful to the effective functioning of a system of competitive bids;

WHEREAS identical bidding may constitute evidence of the existence of conspiracies to monopolize or restrain trade or commerce; and

WHEREAS the collection and dissemination of information with regard to identical bids submitted to the Federal Government will discourage future submissions of such bids, aid in the enforcement of the antitrust laws and the maintenance of a competitive economy and serve to reduce the costs of the Government.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States, I hereby order and direct:

1. Whenever, in connection with a procurement of property or services exceeding $10,000 in total amount and made pursuant to an advertisement or other public invitation for bids, a department, agency or instrumentality of the Government shall hereafter receive two or more bids

(a) which are identical as to unit price or total amount, or

(b) which, after giving effect to discounts and all other relevant factors, the department, agency or instrumentality shall consider to be identical as to unit price or total amount,

then such department, agency, or instrumentality shall make a report of the bid proceedings to the Attorney General not later than 20 days following the award. Whenever two or more bids of the nature described in clauses (a) and (b) hereof are received in bid proceedings which result for any reason in the rejection of all bids and the total value of the property or services bid upon is estimated by the department, agency or instrumentality to be in excess of $10,000, it shall make a report of such proceedings to the Attorney General not later than 20 days following the rejection. Notwithstanding the preceding provisions of this section, a report shall not be made of bid proceedings in which only foreign sources have participated and in connection with which delivery and performance is to take place outside the United States.

2. The reports required by section 1 shall be in a form prescribed by the Attorney General and shall include the following information or such other information as he may prescribe:

(a) The name and location of the particular component of the department, agency or instrumentality which advertised for the bids;

(b) the amount and a description of the property or services for which bids were solicited, and the proposed date of delivery or performance;

(c) the date of opening of the bids; and

(d) the names and addresses of all bidders and as to the bid of each:

(1) the unit price and terms of discount, if any, together with a notation of the point of origin specified by the bidder and a statement whether freight and any other costs of transportation to the point of delivery are included or excluded, and

(2) in the case of an accepted bid identical, or considered to be identical, as to unit price or total amount with another, the method by which selected.

3. Whenever, in connection with a sale of property for more than $10,000 in total amount pursuant to an advertisement or other public invitation for bids, a department, agency or instrumentality of the Government shall receive two or more bids

(a) which are identical as to unit price or total amount, or

(b) which, after giving effect to all relevant factors, the department, agency or instrumentality shall consider to be identical as to unit price or total amount,

then such department, agency or instrumentality shall make a report of the bid proceedings to the Attorney General not later than 20 days following the award to the purchaser. Whenever two or more bids of the nature described in clauses (a) and (b) hereof are received in bid proceedings which result for any reason in the rejection of all bids and the total sales value of the offered property is estimated by the department, agency or instrumentality to be in excess of $10,000, it shall make a report of such proceedings to the Attorney General not later than 20 days following the rejection. The reports required by this section shall be in a form prescribed by the Attorney General and shall include information similar to that prescribed by section 2. Notwithstanding the preceding provisions of this section, a report shall not be made of bid proceedings in which only foreign sources have participated and in connection with which delivery and performance is to take place outside the United States.

4. The Attorney General is granted authority to establish reasonable exemptions and variations from the requirements of section 1 or of section 3 from time to time based upon his experience in connection with this order, including authority to take the following actions:

(a) exclude any category of property or services from the reporting requirements of section 1 or of section 3; and

(b) increase or decrease the $10,000 limit prescribed in section 1 or in section 3.

5. The Attorney General shall consult with the Secretary of Defense, the Administrator of General Services and the heads of such other departments, agencies and instrumentalities of the Government as he may deem advisable for the purpose of obtaining information in a feasible manner with regard to identical bidding in publicly advertised procurement and sale proceedings completed by these departments, agencies and instrumentalities during periods prior to the date of execution of this order. The Secretary of Defense, the Administrator of General Services and the other heads of departments, agencies or instrumentalities consulted by the Attorney General shall cause the submission of reports to him in respect of such categories of these proceedings and for such periods as may be agreed upon. The reports shall conform to the requirements of section 2.

6. The Attorney General shall formulate and put into effect procedures whereby State and local governments are invited to transmit reports to him of identical bids received by such governments similar to the reports required by sections 1, 3 and 5.

7. From time to time, as he shall find suitable, the Attorney General shall make a report to the President

consolidating the information he has received pursuant to this order, and he shall transmit copies thereof to the President of the Senate and the Speaker of the House of Representatives. However, there shall be excluded from such report any information submitted by a department, agency or instrumentality of the Government which it has requested to be withheld for reasons of national security.

8. The principal purpose of this order is to make more effective the enforcement of the antitrust laws by insuring that the Attorney General has at his disposal all information which may tend to establish the presence of a conspiracy in restraint of trade and which may warrant further investigation with a view to preferring civil or criminal charges. In exercising the discretionary authority granted under the provisions of this order, the Attorney General shall be mindful of this purpose and shall exercise such authority in a manner which insures that programs of reporting and analysis hereunder shall not by their magnitude interfere with his enforcement of those laws but instead shall contribute thereto. The heads of the departments, agencies and instrumentalities of the Government shall cooperate with and aid the Attorney General in analyzing the data reported to him and shall make available to him to the fullest extent possible any facilities they may have which would expedite that work. In particular, they should bring to his attention any further information which, in their judgment, may constitute additional evidence of collusion among Government contractors.

9. The heads of the departments, agencies and instrumentalities of the Government are directed to give particular attention to compliance with the provisions of 41 U.S.C. § 252(d) and 10 U.S.C. § 2305(d) requiring referral to the Attorney General of bids received in an advertised procurement proceeding which appear to them to evidence a violation of the antitrust laws. It is to be noted that the bids which must be referred to the Attorney General under those statutes as evidencing collusion include, although they are not limited to, identical bids. Nothing in this order shall be construed to mean that a report submitted hereunder to the Attorney General in connection with identical bids evidencing collusion in a procurement proceeding shall constitute a referral satisfying the requirements of those statutes or of the regulations issued pursuant thereto. Similarly, nothing in this order shall be construed to mean that a report submitted hereunder in connection with identical bids evidencing collusion in a sale proceeding shall satisfy the requirements of 40 U.S.C. § 488 in certain cases, or of the regulations issued pursuant to that statute, that specified information be supplied to the Attorney General for his use in considering the applicability of the antitrust laws to the sale.

JOHN F. KENNEDY.

CROSS REFERENCES

Advertising provisions as applicable to lease-purchase agreements, see section 356 of Title 40, Public Buildings, Property, and Works.

Agency head, definition of, see section 259 of this title.

Armed services procurement generally, see section 2301 et seq. of Title 10, Armed Forces.

Bonneville Dam Project, purchase of supplies and services for, see section 832g of Title 16, Conservation.

Contracts for research or development, reports to Congress, see section 2357 of Title 10, Armed Forces.

General Services Administration generally, see section 751 et seq. of Title 40, Public Buildings, Property, and Works.

National defense contract provisions not authorizing increase in price of subsec. (c)(13) contracts to amount higher than lowest reject bid of responsible bidder, see section 1432 of Title 50, War and National Defense.

Purchases for public institutions of Guam through General Services Administration, see section 1423*l* of Title 48, Territories and Insular Possessions.

References in any Act to section 5 of this title deemed references to subsection (c) of this section, see section 260 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254, 257, 258, 260 of this title; title 22 section 2509; title 38 section 5012; title 40 sections 356, 356a, 604, 752; title 50 sections 1432, 1651.

§ 253. Advertising requirements

Whenever advertising is required—

(a) The advertisement for bids shall be made a sufficient time previous to the purchase or contract, and specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of types of property and services necessary to meet the requirements of the agency concerned. No advertisement or invitation to bid for the carriage of Government property in other than Government-owned cargo containers shall specify carriage of such property in cargo containers of any stated length, height, or width.

(b) All bids shall be publicly opened at the time and place stated in the advertisement. Award shall be made with reasonable promptness by written notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered: *Provided,* That all bids may be rejected when the agency head determines that it is in the public interest so to do.

(June 30, 1949, ch. 288, title III, § 303, 63 Stat. 395; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Mar. 16, 1968, Pub. L. 90-268, § 2, 82 Stat. 49.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-268 added provision that no advertisement or invitation to bid for the carriage of Government property in other than Government-owned cargo containers shall specify carriage of such property in cargo containers of any stated length, height, or width.

1952—Subsec. (a). Act July 12, 1952, substituted "property" for "supplies".

DEFINITIONS

The definitions in section 472 of Title 40, Public Buildings, Property, and Works, apply to terms appearing in this subchapter.

EFFECTIVE DATE

Section effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

CROSS REFERENCES

Advertising for proposals for purchases and contracts for supplies or services, see section 5 of this title.

Agency head, definition of, see section 259 of this title.

Armed services—

Contracts; regulations for bids, see section 2381 of Title 10, Armed Forces.

Formal advertisements for bids; time; opening; award; rejection, see section 2305 of Title 10.

Purchases and contracts; formal advertising; exceptions, see section 2304 of Title 10.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 252, 260 of this title; title 40 sections 604, 752.

§ 254. Negotiated contracts

(a) Requirements

Except as provided in subsection (b) of this section, contracts negotiated pursuant to section 252(c) of this title may be of any type which in the opinion of the agency head will promote the best interests of the Government. Every contract negotiated pursuant to section 252(c) of this title shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business, for the breach or violation of which warranty the Government shall have the right to annul such contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

(b) Barred contracts; fee limitation; determination of use; advance notification

The cost-plus-a-percentage-of-cost system of contracting shall not be used, and in the case of a cost-plus-a-fixed-fee contract the fee shall not exceed 10 per centum of the estimated cost of the contract, exclusive of the fee, as determined by the agency head at the time of entering into such contract (except that a fee not in excess of 15 per centum of such estimated cost is authorized in any such contract for experimental, developmental, or research work and that a fee inclusive of the contractor's costs and not in excess of 6 per centum of the estimated cost, exclusive of fees, as determined by the agency head at the time of entering into the contract, of the project to which such fee is applicable is authorized in contracts for architectural or engineering services relating to any public works or utility project). Neither a cost nor a cost-plus-a-fixed-fee contract nor an incentive-type contract shall be used unless the agency head determines that such method of contracting is likely to be less costly than other methods or that it is impractical to secure property or services of the kind or quality required without the use of a cost or cost-plus-a-fixed-fee contract or an incentive-type contract. All cost and cost-plus-a-fixed-fee contracts shall provide for advance notification by the contractor to the procuring agency of any subcontract thereunder on a cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which exceeds in dollar amount either $25,000 or 5 per centum of the total estimated cost of the prime contract; and a procuring agency, through any authorized representative thereof, shall have the right to inspect the plans and to audit the books and records of any prime contractor or subcontractor engaged in the performance of a cost or cost-plus-a-fixed-fee contract.

(c) Examination of books, records, etc., of contractors; time limitation; exemptions; exceptional conditions; reports to Congress

All contracts negotiated without advertising pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall until the expiration of three years after final payment have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts. Under regulations to be prescribed by the Administrator, however, such clause may be omitted from contracts with foreign contractors or foreign subcontractors if the agency head determines, with the concurrence of the Comptroller General of the United States or his designee, that the omission will serve the best interests of the United States. However, the concurrence of the Comptroller General of the United States or his designee is not required for the omission of such clause—

(1) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination; and

(2) where the agency head determines, after taking into account the price and availability of the property or services from United States sources, that the public interest would be best served by the omission of the clause.

If the clause is omitted based on a determination under clause (2) a written report shall be furnished to the Congress. The power of the agency head to make the determination specified in the preceding sentences shall not be delegable.

(June 30, 1949, ch. 288, title III, § 304, 63 Stat. 395; Oct. 31, 1951, ch. 652, 65 Stat. 700; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Sept. 27, 1966, Pub. L. 89-607, § 2, 80 Stat. 850.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, as amended, known as the Federal Property and Administrative Services Act of 1949. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property and Works, and Tables volume.

AMENDMENTS

1966—Subsec. (c). Pub. L. 89-607 provided for exemption of certain contracts with foreign contractors from the requirement for an examination-of-records clause, such determination to be reported to Congress.

1952—Subsec. (b). Act July 12, 1952, substituted "property" for "supplies".

1951—Subsec. (c). Act Oct. 31, 1951, added subsec. (c).

DEFINITIONS

The definitions in section 472 of Title 40, Public Buildings, Property, and Works, apply to terms appearing in this subchapter.

EFFECTIVE DATE

Section effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under

section 471 of Title 40, Public Buildings, Property, and Works.

EXEMPTION OF FUNCTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

FOREIGN CONTRACTORS

Secretaries of Defense, Army, Navy, or Air Force, or their designees, to determine, prior to exercising the authority provided in the amendment of this section by Pub. L. 89-607 to exempt certain contracts with foreign contractors from the requirement of an examination-of-records clause, that all reasonable efforts have been made to include such examination-of-records clause, as required by par. (11) of Part I of Ex. Ord. No. 10789, and that alternate sources of supply are not reasonably available, see par. (11) of Part I of Ex. Ord. No. 10789, eff. Nov. 14, 1958, 23 F.R. 8897, as amended, set out as a note under section 1431 of Title 50, War and National Defense.

CROSS REFERENCES

Agency head, definition of, see section 259 of this title.

Armed services—

Examination of contractor's books and records, see section 2313 of Title 10, Armed Forces.

Kinds of contracts, see section 2306 of Title 10.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 252, 257 of this title; title 38 section 5012; title 40 sections 604, 752.

§ 254a. Cost-type research and development contracts with educational institutions

On and after September 5, 1962, provision may be made in cost-type research and development contracts (including grants) with universities, colleges, or other educational institutions for payment of reimbursable indirect costs on the basis of predetermined fixed-percentage rates applied to the total, or an element thereof, of the reimbursable direct costs incurred.

(Pub. L. 87-638, Sept. 5, 1962, 76 Stat. 437.)

CODIFICATION

Section was not enacted as part of act June 30, 1949, ch. 288, title III, 63 Stat. 393, which comprises this subchapter.

§ 255. Advance or other payments

(a) Conditions

Any executive agency may—

(1) make advance, partial, progress or other payments under contracts for property or services made by the agency; and

(2) insert in bid solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(b) Amount

Payments made under subsection (a) of this section may not exceed the unpaid contract price.

(c) Security

Advance payments under subsection (a) of this section may be made only upon adequate security and a determination by the agency head that to do so would be in the public interest. Such security may be in the form of a lien in favor of the Government on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien shall be paramount to all other liens.

(June 30, 1949, ch. 288, title III, § 305, 63 Stat. 396; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Aug. 28, 1958, Pub. L. 85-800, § 4, 72 Stat. 966.)

AMENDMENTS

1958—Pub. L. 85-800 authorized advance or other payments under contracts for property or services by agency and insertion in bid solicitations of provision limiting advance or progress payments to small business concerns, restricted payments under subsec. (a) of this section to unpaid contract price, and reworded generally conditions for making advance payments.

1952—Subsecs. (a) and (b). Act July 12, 1952, substituted "property" for "supplies" wherever appearing.

DEFINITIONS

The definitions in section 472 of Title 40, Public Buildings, Property, and Works, apply to terms appearing in this subchapter.

EFFECTIVE DATE

Section effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

EXEMPTION OF FUNCTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

CROSS REFERENCES

Advance payments on negotiated armed services contracts, see section 2307 of Title 10, Armed Forces.

Agency head, definition of, see section 259 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 257 of this title; title 40 sections 604, 752.

§ 256. Repealed. Sept. 10, 1950, ch. 849, § 10(b), 64 Stat. 591

Section, act June 30, 1949, ch. 288, title III, § 306, 63 Stat. 396, related to waiver of liquidated damages, and is now covered by section 256a of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1949, see section 10(b) of act Sept. 10, 1950.

§ 256a. Waiver of liquidated damages

Whenever any contract made on behalf of the Government by the head of any Federal Agency, or by officers authorized by him so to do, includes a provision for liquidated damages for delay, the Comptroller General upon recommendation of such head is authorized and empowered to remit the whole or any part of such damages as in his discretion may be just and equitable.

(Sept. 5, 1950, ch. 849, § 10(a), 64 Stat. 591.)

CODIFICATION

Section was not enacted as part of act June 30, 1949, ch. 288, title III, 63 Stat. 393, which comprises this subchapter.

CROSS REFERENCES

Armed services contracts, remission of liquidated damages, see section 2312 of Title 10, Armed Forces.

§ 257. Administrative determinations

(a) Conclusiveness; delegation of powers

The determinations and decisions provided in this subchapter to be made by the Administrator or other agency head may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final. Except as provided in subsection (b) of this section, and except as provided in section 486(d) of title 40 with respect to the Administrator, the agency head is authorized to delegate his powers provided by this subchapter, including the making of such determinations and decisions, in his discretion and subject to his direction, to any other officer or officers or officials of the agency.

(b) Nondelegable powers; powers delegable to certain persons

The power of the agency head to make the determinations or decisions specified in paragraphs (12) and (13) of section 252(c) of this title shall not be delegable, and the power to make the determinations or decisions specified in paragraph (11) of section 252(c) of this title shall be delegable only to a chief officer responsible for procurement and only with respect to contracts which will not require the expenditure of more than $25,000.

(c) Basis of determinations; finding conclusive; preservation of findings; copy

Each determination or decision required by paragraphs (11), (12), (13), or (14) of section 252 (c), by section 254 or by section 255(c) of this title shall be based upon written findings made by the official making such determination, which findings shall be final and shall be available within the agency for a period of at least six years following the date of the determination. A copy of the findings shall be submitted to the General Accounting Office with the contract.

(d) Preservation of data

In any case where any purchase or contract is negotiated pursuant to the provisions of section 252(c) of this title, except in a case covered by paragraphs (2), (3), (4), (5), or (6) of section 252 (c) of this title, the data with respect to the negotiation shall be preserved in the files of the agency for a period of six years following final payment on such contract.

(June 30, 1949, ch. 288, title III, § 307, 63 Stat. 396; Aug. 28, 1958, Pub. L. 85-800, § 5, 72 Stat. 967; Nov. 8, 1965, Pub. L. 89-343, §§ 3, 4, 79 Stat. 1303.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-343, § 3, inserted "and except as provided in section 486(d) of title 40 with respect to the Administrator.

Subsec. (b). Pub. L. 89-343, § 4, deleted provisions which made the power of the Administrator to make the delegations and determinations specified in section 252(a) of this title delegable only to the Deputy Administrator or to the chief official of any principal organizational unit of the General Services Administration.

1958—Subsec. (b). Pub. L. 85-800, § 5(a), (b), substituted "(12)" for "(11)", "(13)" for "(12)", and "(11)" for "(10)" and eliminated "and in section 255(a) of this title" preceding "shall not be delegable" in first sentence.

Subsec. (c). Pub. L. 85-800, § 5(a), (c), substituted "(11), (12), (13), or (14)" for "(10), (11), (12), or (13)", and "255(c)" for "255(a)".

DEFINITIONS

The definitions in section 472 of Title 40, Public Buildings, Property, and Works, apply to terms appearing in this subchapter.

EFFECTIVE DATE

Section effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

CROSS REFERENCES

Agency head, definition of, see section 259 of this title.

Determinations and decisions on armed services contracts, see section 2310 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 sections 604, 752.

§ 258. Laws applicable to contracts

No purchase or contract shall be exempt from sections 35 to 45 of this title, or from sections 276a to 276a-5 of title 40, solely by reason of having been entered into pursuant to section 252(c) of this title without advertising, and the provisions of sections 276a to 276a-5, 324, and 325a of title 40 and sections 35 to 45 of this title, if otherwise applicable, shall apply to such purchases and contracts.

(June 30, 1949, ch. 288, title III, § 308, 63 Stat. 397.)

REFERENCES IN TEXT

Sections 35 to 45 of this title, referred to in text, are popularly known as the Walsh-Healey Act.

Sections 276a to 276a-5 of title 40, referred to in text, are popularly known as the Davis-Bacon Act.

Sections 324 and 325a of title 40, referred to in text, were repealed by Pub. L. 87-581, title II, § 203, Aug. 13, 1962, 76 Stat. 360. See now sections 330 and 328(a) respectively of Title 40, Public Buildings, Property, and Works.

EFFECTIVE DATE

Section effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 sections 604, 752.

§ 259. Definitions

As used in this subchapter—

(a) The term "agency head" shall mean the head or any assistant head of any executive agency, and may at the option of the Administrator include the chief official of any principal organizational unit of the General Services Administration.

(b) Repealed. July 12, 1952, ch. 703, § 1(h), 66 Stat. 593.

(June 30, 1949, ch. 288, title III, § 309, 63 Stat. 397; July 12, 1952, ch. 703, § 1(h), 66 Stat. 593.)

AMENDMENTS

1952—Subsec. (b). Act July 12, 1952, repealed subsec. (b), which defined "supplies".

DEFINITIONS

The definitions in section 472 of Title 40, Public Buildings, Property, and Works, apply to terms appearing in this subchapter.

EFFECTIVE DATE

Section effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings. Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 sections 604, 752.

§ 260. Laws not applicable to contracts

Sections 5, 8, and 13 of this title shall not apply to the procurement of property or services made by an executive agency pursuant to this subchapter. Any provision of law which authorizes an executive agency (other than an executive agency which is exempted from the provisions of this subchapter by section 252(a) of this title), to procure any property or services without advertising or without regard to said section 5 of this title shall be construed to authorize the procurement of such property or services pursuant to section 252(c)(15) of this title without regard to the advertising requirements of sections 252(c) and 253 of this title.

(June 30, 1949, ch. 288, title III, § 310, 63 Stat. 397; July 12, 1952, ch. 703, § 1(m), (n), 66 Stat. 594; Aug. 28, 1958, Pub. L. 85-800, § 6, 72 Stat. 967; Nov. 8, 1965, Pub. L. 89-343, § 5, 79 Stat. 1303.)

AMENDMENTS

1965—Pub. L. 89-343 substituted provisions making sections 5, 8, and 13 of this title inapplicable to the procurement of property or services made by an executive agency pursuant to this subchapter, and requiring any provision of law which authorizes an executive agency (other than an executive agency which is exempted from the provisions of this subchapter by section 252(a) of this title) to procure any property or services without advertising or without regard to said section 5 of this title to be construed to authorize the procurement of such property or services pursuant to section 252(c)(15) of this title without regard to the advertising requirements of section 252(c) and 253 of this title, for provisions which made sections 5, 6, 6a, and 13 of this title inapplicable to the procurement of property or services by the General Services Administration, or within the scope of authority delegated by the Administrator to any other executive agency, and which required reference in any Act to the applicability of section 5 of this title to the procurement of property or services by the General Services Administration or any constituent organization thereof or any other executive agency delegated authority pursuant to section 252(a)(2) of this title to be deemed a reference to section 252(c) of this title.

1958—Subsec. (b). Pub. L. 85-800 inserted "or any other executive agency delegated authority pursuant to section 252(a)(2) of this title".

1952—Act July 12, 1952, made former section subsec. (a), added subsec. (b), and substituting "property" for "supplies" in subsec. (a).

EFFECTIVE DATE

Section effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

CROSS REFERENCES

Laws inapplicable to armed services contracts, see section 2314 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 sections 604, 752.

SUBCHAPTER V—FOREIGN EXCESS PROPERTY

§§ 271 to 274. Transferred

Section 271, act June 30, 1949, ch. 288, title IV, § 401, 63 Stat. 397, which related to disposal of foreign excess property, was transferred to section 511 of Title 40, Public Buildings, Property, and Works.

Section 272, act June 30, 1949, ch. 288, title IV, § 402, 63 Stat. 398, which related to methods and terms of disposal, was transferred to section 512 of Title 40.

Section 273, act June 30, 1949, ch. 288, title IV, § 403, 63 Stat. 398, which related to proceeds from disposals, was transferred to section 513 of Title 40.

Section 274, act June 30, 1949, ch. 288, title IV, § 404, 63 Stat. 398, which related to general provisions, was transferred to section 514 of Title 40.

SUBCHAPTER VI—FEDERAL RECORD MANAGEMENT

§§ 281 to 291. Transferred

Section 281, acts June 30, 1949, ch. 288, title V, § 502; Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583, which related to custody and control of property, was transferred to section 392 of former Title 44, Public Printing and Documents.

Section 282, acts June 30, 1949, ch. 288, title V, § 503; Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583, which related to National Historical Publications Commission, was transferred to section 393 of former Title 44.

Section 283, acts June 30, 1949, ch. 288, title V, § 504; Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583, which related to the establishment of the Federal Records Council, was transferred to section 394 of former Title 44.

Section 284, acts June 30, 1949, ch. 288, title V, § 505; Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583, which related to records management by Administrator, was transferred to section 395 of former Title 44.

Section 285, acts June 30, 1949, ch. 288, title V, § 506; Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583, which related to records management by agency heads, was transferred to section 396 of former Title 44.

Section 286, acts June 30, 1949, ch. 288, title V, § 507; Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583, which related to Archival administration, was transferred to section 397 of former Title 44.

Section 287, acts June 30, 1949, ch. 288, title V, § 508; Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583, which related to reports, was transferred to section 398 of former Title 44.

Section 288, acts June 30, 1949, ch. 288, title V, § 509; Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583, which related to legal status of reproductions; official seal; fees for copies and reproductions, was transferred to section 399 of former Title 44.

Section 289, acts June 30, 1949, ch. 288, title V, § 510; Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583, which related to limitation on liability, was transferred to section 400 of former Title 44.

Section 290, acts June 30, 1949, ch. 288, title V, § 511; Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583, which related to definitions, was transferred to section 401 of former Title 44.

Section 291, act Aug. 2, 1946, ch. 753, title I, § 140, 60 Stat. 833, which related to transfer of records of Congress, was transferred to section 402 of former Title 44.

Sections 392 to 402 of former Title 44 are now covered by chapter 21 (§ 2101 et seq.), chapter 25 (§ 2501 et seq.), chapter 27 (§ 2701 et seq.), chapter 29 (§ 2901 et seq.), and chapter 31 (§ 3101 et seq.) of Title 44, Public Printing and Documents.

CHAPTER 5—JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

Sec.
321. Limitation on pleading contract provisions relating to finality; standards of review.
322. Contract provisions making decisions final on questions of law.

§ 321. Limitation on pleading contract provisions relating to finality; standards of review

No provision of any contract entered into by the United States, relating to the finality or conclusiveness of any decision of the head of any department or agency or his duly authorized representative or board in a dispute involving a question arising under such contract, shall be pleaded in any suit now filed or to be filed as limiting judicial review of any such decision to cases where fraud by such official or his said representative or board is alleged: *Provided, however,* That any such decision shall be final and conclusive unless the same is fraudulent [1] or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence.

(May 11, 1954, ch. 199, § 1, 68 Stat. 81.)

AGENCY ACTIONS GENERALLY, JUDICIAL REVIEW

Judicial review of agency actions generally, see section 701 et seq. of Title 5, Government Organization and Employees.

§ 322. Contract provisions making decisions final on questions of law

No Government contract shall contain a provision making final on a question of law the decision of any administrative official, representative, or board.

(May 11, 1954, ch. 199, § 2, 68 Stat. 81.)

CHAPTER 6—SERVICE CONTRACT LABOR STANDARDS

Sec.
351. Required contract provisions; minimum wages.
352. Violations.
(a) Liability of responsible party; withholding payments due on contract; payment of underpaid employees from withheld payments.
(b) Enforcement of section.
(c) Cancellation of contract; contracts for completion of original contract; liability of original contractor for additional cost.
353. Law governing authority of Secretary.
(a) Enforcement of chapter.
(b) Limitations and regulations allowing variations, tolerances and exemptions.
(c) Predecessor contracts; employees wages and fringe benefits.
(d) Duration of contract.
354. List of violators; prohibition of contract award to firms appearing on list; actions to recover underpayments; payment of sums recovered.
355. Exclusion of fringe benefit payments in determining overtime pay.
356. Exemptions.
357. Definitions.
358. Wage and fringe benefit determinations of Secretary.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 29 sections 206, 653.

§ 351. Required contract provisions; minimum wages

(a) Every contract (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of $2,500, except as provided in section 356 of this title, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees, shall contain the following:

(1) A provision specifying the minimum monetary wages to be paid the various classes of service employees in the performance of the contract or any subcontract thereunder, as determined by the Secretary, or his authorized representative, in accordance with prevailing rates for such employees in the locality, or, where a collective-bargaining agreement covers any such service employees, in accordance with the rates for such employees provided for in such agreement, including prospective wage increases provided for in such agreement as a result of arm's length negotiations. In no case shall such wages be lower than the minimum specified in subsection (b) of this section.

(2) A provision specifying the fringe benefits to be furnished in the various classes of service employees, engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative to be prevailing for such employees in the locality, or, where a collective-bargaining agreement covers any such service employees, to be provided for in such agreement, including prospective fringe benefits increases provided for in such agreement as a result of arm's-length negotiations. Such fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor. The obligation under this subparagraph may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary.

(3) A provision that no part of the services covered by this chapter will be performed in buildings or surroundings or under working

[1] So in original. Probably should read "fraudulent".

conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish the services.

(4) A provision that on the date a service employee commences work on a contract to which this chapter applies, the contractor or subcontractor will deliver to the employee a notice of the compensation required under paragraphs (1) and (2) of this subsection, on a form prepared by the Federal agency, or will post a notice of the required compensation in a prominent place at the worksite.

(5) A statement of the rates that would be paid by the Federal agency to the various classes of service employees if section 5341 or section 5332 of title 5 were applicable to them. The Secretary shall give due consideration to such rates in making the wage and fringe benefit determinations specified in this section.

(b)(1) No contractor who enters into any contract with the Federal Government the principal purpose of which is to furnish services through the use of service employees and no subcontractor thereunder shall pay any of his employees engaged in performing work on such contracts less than the minimum wage specified under section 206(a)(1) of title 29.

(2) The provisions of sections 352 to 354 of this title shall be applicable to violations of this subsection.

(Pub. L. 89-286, § 2, Oct. 22, 1965, 79 Stat. 1034; Pub. L. 92-473, §§ 1, 2, Oct. 9, 1972, 86 Stat. 789; Pub. L. 94-489, §§ 1, 2, Oct. 13, 1976, 90 Stat. 2358.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-489, § 1(a), struck out "as defined herein" following "use of service employees".

Subsec. (a)(5). Pub. L. 94-489, § 2, added "or section 5332" following "section 5341".

Subsec. (b)(1). Pub. L. 94-489, § 1(b), struck out "as defined herein" following "use of service employees".

1972—Subsec. (a)(1). Pub. L. 92-473, § 1(a), provided for minimum monetary wages to be paid service employees where collective-bargaining agreement covers any such service employees in accordance with the rates for such employees provided for in such agreement, including prospective wage increases provided for in such agreement as a result of arm's-length negotiations.

Subsec. (a)(2). Pub. L. 92-473, § 1(b), provided for fringe benefits to be furnished service employees where collective-bargaining agreement covers any such service employees, to be provided for in such agreement, including prospective fringe increases provided for in such agreement as a result of arm's-length negotiations.

Subsec. (a)(5). Pub. L. 92-473, § 2, added par. (5).

EFFECTIVE DATE

Section 9 of Pub. L. 89-286 provided that: "This Act [enacting this chapter] shall apply to all contracts entered into pursuant to negotiations concluded or invitations for bids issued on or after ninety days from the date of enactment of this Act [Oct. 22, 1965]."

SHORT TITLE

Section 1 of Pub. L. 89-286 provided that: "This Act [enacting this chapter] may be cited as the 'Service Contract Act of 1965'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 352, 353, 357, 358 of this title; title 29 section 848.

§ 352. Violations

(a) Liability of responsible party; withholding payments due on contract; payment of underpaid employees from withheld payments

Any violation of any of the contract stipulations required by section 351(a)(1) or (2) or of section 351(b) of this title shall render the party responsible therefor liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due to any employee engaged in the performance of such contract. So much of the accrued payment due on the contract or any other contract between the same contractor and the Federal Government may be withheld as is necessary to pay such employees. Such withheld sums shall be held in a deposit fund. On order of the Secretary, any compensation which the head of the Federal agency or the Secretary has found to be due pursuant to this chapter shall be paid directly to the underpaid employees from any accrued payments withheld under this chapter.

(b) Enforcement of section

In accordance with regulations prescribed pursuant to section 353 of this title, the Federal agency head or the Secretary is hereby authorized to carry out the provisions of this section.

(c) Cancellation of contract; contracts for completion of original contract; liability of original contractor for additional cost

In addition, when a violation is found of any contract stipulation, the contract is subject upon written notice to cancellation by the contracting agency. Whereupon, the United States may enter into other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

(Pub. L. 89-286, § 3, Oct. 22, 1965, 79 Stat. 1035.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 351 of this title.

§ 353. Law governing authority of Secretary

(a) Enforcement of chapter

Sections 38 and 39 of this title shall govern the Secretary's authority to enforce this chapter, make rules, regulations, issue orders, hold hearings, and make decisions based upon findings of fact, and take other appropriate action hereunder.

(b) Limitations and regulations allowing variations, tolerances, and exemptions

The Secretary may provide such reasonable limitations and may make such rules and regulations allowing reasonable variation, tolerances, and exemptions to and from any or all provisions of this chapter (other than section 358 of this title), but only in special circumstances where he determines that such limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of government business, and is in accord with the remedial purpose of this chapter to protect prevailing labor standards.

(c) Predecessor contracts; employees wages and fringe benefits

No contractor or subcontractor under a contract, which succeeds a contract subject to this chapter and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: *Provided*, That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality.

(d) Duration of contract

Subject to limitations in annual appropriation Acts but notwithstanding any other provision of law, contracts to which this chapter applies may, if authorized by the Secretary, be for any term of years not exceeding five, if each such contract provides for the periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 351 of this title no less often than once every two years during the term of the contract, covering the various classes of service employees.

(Pub. L. 89-286, § 4, Oct. 22, 1965, 79 Stat. 1035; Pub. L. 92-473, § 3, Oct. 9, 1972, 86 Stat. 789.)

AMENDMENTS

1972—Subsec. (b). Pub. L. 92-473, § 3(a), excluded section 358 of this title from being subject to Secretary's authority to provide limitations and to make regulations respecting application of provisions of this chapter, substituted "but only in special circumstances where he determines that such limitation, variation, tolerance, or exemption is necessary and proper" for "as he may find necessary and proper", and authorized administrative action in accord with the remedial purpose of this chapter to protect prevailing labor standards.

Subsecs. (c), (d). Pub. L. 92-473, § 3(b), added subsecs. (c) and (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 352 of this title.

§ 354. List of violators; prohibition of contract award to firms appearing on list; actions to recover underpayments; payment of sums recovered

(a) The Comptroller General is directed to distribute a list to all agencies of the Government giving the names of persons or firms that the Federal agencies or the Secretary have found to have violated this chapter. Unless the Secretary otherwise recommends because of unusual circumstances, no contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date of publication of the list containing the name of such persons or firms. Where the Secretary does not otherwise recommend because of unusual circumstances, he shall, not later than ninety days after a hearing examiner has made a finding of a violation of this chapter, forward to the Comptroller General the name of the individual or firm found to have violated the provisions of this chapter.

(b) If the accrued payments withheld under the terms of the contract are insufficient to reimburse all service employees with respect to whom there has been a failure to pay the compensation required pursuant to this chapter, the United States may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayments. Any sums thus recovered by the United States shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employee or employees. Any sum not paid to an employee because of inability to do so within three years shall be covered into the Treasury of the United States as miscellaneous receipts.

(Pub. L. 89-286, § 5, Oct. 22, 1965, 79 Stat. 1035; Pub. L. 92-473, § 4, Oct. 9, 1972, 86 Stat. 790.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-473 authorized award of contracts to violators because of unusual circumstances and required the Secretary to forward names of violators to Comptroller General within ninety days of hearing examiner's finding of a violation where the Secretary does not recommend awards because of unusual circumstances.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 351 of this title.

§ 355. Exclusion of fringe benefit payments in determining overtime pay

In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of pay of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act [29 U.S.C. 201 et seq.] by provisions of section 7(d) thereof [29 U.S.C. 207(d)].

(Pub. L. 89-286, § 6, Oct. 22, 1965, 79 Stat. 1035.)

REFERENCES IN TEXT

The Fair Labor Standards Act, referred to in text, is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified principally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables volume.

§ 356. Exemptions

This chapter shall not apply to—

(1) any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works;

(2) any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act [41 U.S.C. 35 et seq.];

(3) any contract for the carriage of freight or personnel by vessel, airplane, bus, truck,

express, railway line or oil or gas pipeline where published tariff rates are in effect;

(4) any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934 [47 U.S.C. 151 et seq.];

(5) any contract for public utility services, including electric light and power, water, steam, and gas;

(6) any employment contract providing for direct services to a Federal agency by an individual or individuals; and

(7) any contract with the United States Postal Service, the principal purpose of which is the operation of postal contract stations.

(Pub. L. 89-286, § 7, Oct. 22, 1965, 79 Stat. 1035.)

REFERENCES IN TEXT

The Walsh-Healey Public Contracts Act, referred to in par. (2), probably means act June 30, 1936, ch. 881, 49 Stat. 2036, commonly known as the Walsh-Healey Act, which is classified generally to sections 35 to 45 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note under section 35 of this title and Tables volume. See also section 262 of Title 29, Labor.

The Communication Act of 1934, as amended, referred to in par. (4), is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to chapter 5 (§ 151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Tables volume.

CHANGE OF NAME

The Post Office Department has been redesignated the United States Postal Service pursuant to Pub. L. 91-375, § 6(*a*), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 357 of this title.

§ 357. Definitions

For the purposes of this chapter—

(a) "Secretary" means Secretary of Labor.

(b) The term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 356 of this title, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(c) The term "compensation" means any of the payments or fringe benefits described in section 351 of this title.

(d) The term "United States" when used in a geographical sense shall include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island, but shall not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country.

(Pub. L. 89-286, § 8, Oct. 22, 1965, 79 Stat. 1036; Pub. L. 93-57, § 1, July 6, 1973, 87 Stat. 140; Pub. L. 94-489, § 3, Oct. 13, 1976, 90 Stat. 2358.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (d), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables volume.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-489 substituted provision defining service employees to include all employees, but excluding bona fide executive, administrative, and professional employees, for provision defining service employees as guards, watchmen, any person engaged in a recognized trade or craft, or in unskilled, semiskilled, or skilled manual labor occupations; and any other employee including a foreman or supervisor in a position having trade, craft, or laboring experience as the paramount requirement.

1973—Subsec. (d). Pub. L. 93-57 defined term "United States" to include Canton Island.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 2 of Pub. L. 93-57 provided that: "The amendment [to subsec. (d) of this section] made hereby shall be effective with respect to all contracts entered into at any time after the date of enactment [July 6, 1973]."

§ 358. Wage and fringe benefit determinations of Secretary

It is the intent of the Congress that determinations of minimum monetary wages and fringe benefits for the various classes of service employees under the provisions of paragraphs (1) and (2) of section 351[1] of this title should be made with respect to all contracts subject to this chapter, as soon as it is administratively feasible to do so. In any event, the Secretary shall make such determinations with respect to at least the following contracts subject to this chapter which are entered into during the applicable fiscal year:

(1) For the fiscal year ending June 30, 1973, all contracts under which more than twenty-five service employees are to be employed.

(2) For the fiscal year ending June 30, 1974, all contracts, under which more than twenty service employees are to be employed.

(3) For the fiscal year ending June 30, 1975, all contracts under which more than fifteen service employees are to be employed.

(4) For the fiscal year ending June 30, 1976, all contracts under which more than ten service employees are to be employed.

(5) On or after July 1, 1976, all contracts under which more than five service employees are to be employed.

(Pub. L. 89-286, § 10, as added Pub. L. 92-473, § 5, Oct. 9, 1972, 86 Stat. 790, and amended Pub. L. 94-273, § 29, Apr. 21, 1976, 90 Stat. 380.)

[1] So in original. Probably should be "section 351(a)".

AMENDMENTS

1976—Par. (5). Pub. L. 94-273 substituted "On or after July 1, 1976" for "For the fiscal year ending June 30, 1977, and for each fiscal year thereafter".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 353 of this title.

CHAPTER 7—OFFICE OF FEDERAL PROCUREMENT POLICY

Sec.

401. Congressional declaration of policy.
402. Congressional findings and purpose.
403. Definition.
404. Establishment of Office of Federal Procurement Policy; appointment of Administrator.
405. Authority and functions of the Administrator.
(a) Issuance of policy directions, regulations, procedures, and forms.
(b) Inapplicability of such directions and regulations to reci..ents of federal grants.
(c) Authority limited to procurement from appropriated funds; study and report of procurement from nonappropriated funds.
(d) Uniform procurement regulations; revision; research; recommendations on procurement personnel.
(e) Consultation with executive agencies.
(f) Noninterference with executive agencies.
(g) Restriction on delegation of other functions.
406. Administrative powers.
407. Responsiveness to Congress.
(a) Annual reports on activities.
(b) Submission of major policy matters to Congressional Committees.
(c) Waiver of notice requirement by President.
408. Applicability of existing laws.
409. Applicability of existing regulations.
410. Authorization of appropriations.
411. Delegation of authority by Administrator.
412. Comptroller General's access to information from Administrator; rule making procedure.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 40 sections 474, 481, 487.

§ 401. Congressional declaration of policy

It is declared to be the policy of Congress to promote economy, efficiency, and effectiveness in the procurement of property and services by and for the executive branch of the Federal Government by—

(1) establishing policies, procedures, and practices which will require the Government to acquire property and services of the requisite quality and within the time needed at the lowest reasonable cost, utilizing competitive procurement methods to the maximum extent practicable;

(2) improving the quality, efficiency, economy, and performance of Government procurement organizations and personnel;

(3) avoiding or eliminating unnecessary overlapping or duplication of procurement and related activites;

(4) avoiding or eliminating unnecessary or redundant requirements placed on contractor and Federal procurement officials;

(5) identifying gaps, omissions, or inconsistencies in procurement laws, regulations, and directives and in other laws, regulations, and directives, relating to or affecting procurement;

(6) achieving greater uniformity and simplicity, whenever appropriate, in procurement procedures;

(7) coordinating procurement policies and programs of the several departments and agencies;

(8) minimizing possible disruptive effects of Government procurement on particular industries, areas, or occupations;

(9) improving understanding of Government procurement laws and policies within the Government and by organizations and individuals doing business with the Government;

(10) promoting fair dealing and equitable relationships among the parties in Government contracting; and

(11) otherwise promoting economy, efficiency, and effectiveness in Government procurement organizations and operations.

(Pub. L. 93-400, § 2, Aug. 30, 1974, 88 Stat. 796.)

SHORT TITLE

Section 1 of Pub. L. 93-400 provided: "That this Act [enacting this chapter and amending section 5315 of Title 5, Government Organization and Employees, and sections 474, 481, and 487 of Title 40, Public Buildings, Property, and Works] may be cited as the 'Office of Federal Procurement Policy Act'."

§ 402. Congressional findings and purpose

(a) The Congress finds that economy, efficiency, and effectiveness in the procurement of property and services by the executive agencies will be improved by establishing an office to exercise responsibility for procurement policies, regulations, procedures, and forms.

(b) The purpose of this chapter is to establish an Office of Federal Procurement Policy in the Office of Management and Budget to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws.

(Pub. L. 93-400, § 3, Aug. 30, 1974, 88 Stat. 796.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), read in the original, this Act, meaning Pub. L. 93-400, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 403. Definition

As used in this chapter, the term "executive agency" means an executive department, a military department, and an independent establishment within the meaning of sections 101, 102, and 104(1), respectively, of title 5, and also a wholly owned Government corporation within the meaning of section 846 of title 31.

(Pub. L. 93-400, § 4, Aug. 30, 1974, 88 Stat. 797.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, this Act, meaning Pub. L. 93-400, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 404. Establishment of Office of Federal Procurement Policy; appointment of Administrator

(a) There is established in the Office of Management and Budget an office to be known as the Office of Federal Procurement Policy (hereinafter referred to as the "Office").

(b) There shall be at the head of the Office an Administrator for Federal Procurement Policy (hereinafter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate.

(Pub. L. 93-400, § 5, Aug. 30, 1974, 88 Stat. 797.)

§ 405. Authority and functions of the Administrator

(a) Issuance of policy directions, regulations, procedures, and forms

The Administrator shall provide overall direction of procurement policy. To the extent he considers appropriate and with due regard to the program activities of the executive agencies, he shall prescribe policies, regulations, procedures, and forms, which shall be in accordance with applicable laws and shall be followed by executive agencies (1) in the procurement of—

(A) property other than real property in being;

(B) services, including research and development; and

(C) construction, alteration, repair, or maintenance of real property;

and (2) in providing for procurement by recipients of Federal grants or assistance of items specified in clauses (A), (B), and (C) of this subsection, to the extent required for performance of Federal grant or assistance programs.

(b) Inapplicability of such directions and regulations to recipients of federal grants

Nothing in subsection (a)(2) of this section shall be construed—

(1) to permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

(2) to authorize any action by receipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.

(c) Authority limited to procurement from appropriated funds; study and report of procurement from nonappropriated funds

The authority of the Administrator under this chapter shall apply only to procurement payable from appropriated funds: *Provided*, That the Administrator undertake a study of procurement payable from nonappropriated funds. The results of the study, together with recommendations for administrative or statutory changes, shall be reported to the President of the Senate and the Speaker of the House of Representatives at the earliest practicable date, but in no event later than two years after August 30, 1974.

(d) Uniform procurement regulations; revision; research; recommendations on procurement personnel

The functions of the Administrator shall include—

(1) establishing a system of coordinated, and to the extent feasible, uniform procurement regulations for the executive agencies;

(2) establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(3) monitoring and revising policies, regulations, procedures, and forms relating to reliance by the Federal Government on the private sector to provide needed property and services;

(4) promoting and conducting research in procurement policies, regulations, procedures, and forms;

(5) establishing a system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch, and the private sector;

(6) recommending and promoting programs of the Civil Service Commission and executive agencies for recruitment, training, career development, and performance evaluation of procurement personnel.

(e) Consultation with executive agencies

In the development of policies, regulations, procedures, and forms to be authorized or prescribed by him, the Administrator shall consult with the executive agencies affected, including the Small Business Administration and other executive agencies promulgating policies, regulations, procedures, and forms affecting procurement. To the extent feasible, the Administrator may designate an executive agency or agencies, establish interagency committees, or otherwise use agency representatives or personnel, to solicit the views and the agreement, so far as possible, of executive agencies affected on significant changes in policies, regulations, procedures, and forms.

(f) Noninterference with executive agencies

The authority of the Administrator under this chapter shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specified property, services, or construction, including particular specifications therefor; or

(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

(g) Restriction on delegation of other functions

Except as otherwise provided by law, no duties, functions, or responsibilities, other than those expressly assigned by this chapter, shall be assigned, delegated, or transferred to the Administrator.

(Pub. L. 93-400, § 6, Aug. 30, 1974, 88 Stat. 797.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c), (f), and (g), read in the original, this Act, meaning Pub. L. 93-400, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 407, 408, 410 of this title.

§ 406. Administrative powers

Upon the request of the Administrator, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Office to the greatest practicable extent for the performance of functions under this chapter; and

(2) except when prohibited by law, furnish to the Administrator and give him access to all information and records in its possession which the Administrator may determine to be necessary for the performance of the functions of the Office.

(Pub. L. 93-400, § 7, Aug. 30, 1974, 88 Stat. 798.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, this Act, meaning Pub. L. 93-400, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 407. Responsiveness to Congress

(a) Annual reports on activities

The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as may be necessary for this purpose, together with appropriate legislative recommendations.

(b) Submission of major policy matters to Congressional Committees

At least 30 days prior to the effective date of any major policy or regulation prescribed under section 405(a) of this title, the Administrator shall transmit to the Committees on Government Operations of the House of Representatives and of the Senate a detailed report on the proposed policy or regulation. Such report shall include—

(1) a full description of the policy or regulation;

(2) a summary of the reasons for the issuance of such policy or regulation; and

(3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy or regulation.

(c) Waiver of notice requirement by President

In the case of an emergency, the President may waive the notice requirement of subsection (b) of this section by submitting in writing to the Congress his reasons therefor at the earliest practicable date on or before the effective date of any major policy or regulation.

(Pub. L. 93-400, § 8, Aug. 30, 1974, 88 Stat. 798.)

CHANGE OF NAME

The Senate Committee on Government Operations was abolished and replaced by the Committee on Governmental Affairs effective Mar. 19, 1975. See Rule XXV of the Standing Rules of the Senate as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

§ 408. Applicability of existing laws

The authority of an executive agency under any other law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in section 405 of this title.

(Pub. L. 93-400, § 9, Aug. 30, 1974, 88 Stat 799.)

§ 409. Applicability of existing regulations

Procurement policies, regulations, procedures, or forms in effect as of August 30, 1974, shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administrator.

(Pub. L. 93-400, § 10, Aug. 30, 1974, 88 Stat. 799.)

§ 410. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this chapter, and for no other purpose—

(1) not to exceed $2,000,000 for the fiscal year ending June 30, 1975, of which not to exceed $150,000 shall be available for the purpose of research in accordance with section 405(d)(4) of this title; and

(2) such sums as may be necessary for each of the four fiscal years thereafter.

Any subsequent legislation to authorize appropriations to carry out the purposes of this chapter shall be referred in the Senate to the Committee on Governmental Affairs.

(Pub. L. 93-400, § 11, Aug. 30, 1974, 88 Stat. 799; S. Res. 4, Feb. 4, 1977.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, this Act, meaning Pub. L. 93-400, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

CHANGE OF NAME

The Senate Committee on Government Operations was abolished and replaced by the Committee on Governmental Affairs effective Mar. 19, 1975. See Rule XXV of the Standing Rules of the Senate as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

§ 411. Delegation of authority by Administrator

(a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power under this chapter, other than his basic authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out that policy, to any other executive agency with the consent of such agency or at the direction of the President.

(b) The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this chapter.

(Pub. L. 93-400, § 12, Aug. 30, 1974, 88 Stat. 799.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, this Act, meaning Pub. L. 93-400, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables volume.

§ 412. Comptroller General's access to information from Administrator; rule making procedure

(a) The Administrator and personnel in his Office shall furnish such information as the Comptroller General may require for the discharge of his responsibilities. For this purpose, the Comptroller General or his respresentatives shall have access to all books, documents, papers, and records of the Office.

(b) The Administrator shall, by regulation, require that formal meetings of the Office, as designated by him, for the purpose of establishing procurement policies and regulations shall be open to the public, and that public notice of each such meeting shall be given not less than ten days prior thereto.

(Pub. L. 93-400, § 14, Aug. 30, 1974, 88 Stat. 800.)

U. S. GOVERNMENT PRINTING OFFICE : 1978 O - 71-999 (Vol 9)